United States Court of Appeals

for the Second Circuit

APPENDIX

76-1110

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

Docket No. 76-1110

-against-

JOSEPH STASSI, a/k/a JOE ROGERS, ANTHONY STASSI, and WILLIAM SORENSON, a/k/a BUBBY,

Defendants-Appellants.

----------X

B
P/S

APPENDIX TO THE BRIEF
OF APPELLANT SORENSON

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RALPH S. NADEN, Esq.
253 Broadway
New York, N.Y. 10007
(212) 964-1998
Attorney for Appellant
WILLIAM SORENSON

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE KNAPP

75 CRIM. 502

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	James E. Nesland, AUSA. 791-0071
1. JOSEPH STASSI, a/k/a Joe Rogers- 1-5	
2. ANTHONY STASSI- 1-5	
3. JEAN CLAUDE OLIVOS-1-5	
4. WILLIAM SORRISO, a/k/a Eddie -1-5	
5. CARMINE COSENTINO -1-5	
6. CHARLES ALAIMO- 1-5	
7. JEAN CUTOLELLI, a/k/a the Uncle-1	
Mail to: 11/16/75	For Defendant: (5)Patrick M. Wall 36 E 54th N.Y.C. tele:986-6688 (6)Gustave H. Newman 522 5 N.Y.C. tele:PL 2-4066

(07) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed	Marshal					
Violation	Docket fee					
Title 21						
Sec. 846&963						

Consp. to viol. Fed. Narco. Laws.(Ct.1)
21:173&4 Import. & sale of herein in the U.S.(Cts.2-5)
21:812,841(a)(1),(b) distr. & possess. w/intent to distr.
Heroin, 1 (Cts.6&7)
(Five Counts)

JAN 5 1976

DATE	PROCEEDINGS
5-23-75	Filed indictment. (Superseding 75 Cr 395 and referred to Knapp, J.) Defts.Cosentino & Alaimo, B/Ws ordered. Gagliardi,J.
06-19-75	Filed Govt. affdvt. re: opposition to A. Stassi's motion for discovery,etc.(filed in 75 Cr. 395)
07-02-75	Filed (2) envelopes containging certain materials. Ordered sealed by the Court.on 6/20/75.-Knapp,J.
07/16/75	Filed memo end 42661...Accordingly, the govt's motion for a protective order denying discovery of the statutes to obtained through consensual eavesdroppings will be granted. Of course if the informant does testify as a witness, of it the conversations should in any other way become relevant during the course of the trial, the govt. will bgordered to turn over transcripts of the conversations to the deft,etc.Knapp,J.mm

-over-

PROCEEDINGS

5 Filed OPINION #42706- ...deft. Anthony Stassi seeks to dismiss all indictments against his primarily on the ground that his fifth and sixth amendment rights to a speedy trial have been violated. The deft.'s motions will be denied. Knapp,J. nn

07-08-75 Filed OPINION #42756 - deft. A. Stassi moves to extend his bail provisions in order to enable him to travel to Europe without an increase in his surety bond during the period 6-30-75 to 7-25-75. The motion is denied. Knapp,J. nn

06-27-75 Filed Magistrates proceedings(deft. Charles Alaimo) from Southern District of Florida, acknowledged receipt of papers.

7-28-75 Deft. Alaimo(atty. present) deft. pleads not guilty. Case referredto Judge Knapp. Bail was fixed in the sum of $20,000. cash or surety to be posted on 7-31-75 by 4PM.

Deft. Consa'vo(atty. present) bail was fixed in the sum of$15,000. cash or surety to be posted by 7-31-75 by 4PM. Case referred to Judge Knapp,Cooper,J.

7-30-75 J. Stassi-filed affdvt. of Edward T. M. Garland.
7-30-75 A. Stassi-filed motion re: reconsider disclosure of name of informers and recordings of conversations with informers (consensual eavesdropping)
7-30-75 A. Stassi-filed memo. of law in support of motion re: disclosure.
7-30-75 A. Stassi-filed motion re: reconsider disclosure of recordings and transcripts of consensual eavesdripping and name of informer(s).
7-30-75 A. Stassi-filed memo. of law re: support of motion re: disclosure.
7-30-75 A. Stassi-filed memo. of law re: support of motion for discovery and inspection.
7-30-75 A. Stassi-filed motion re: discovery of materials pertaining to or resulting from thay type of electronic surveillance known as "consensual eavesdropping."
7-30-75 J. Stassi-filed notice of motion re: adopt motions and memoranda of law in support thereof.
7-30-75 J. Stassi-filed memo. of law re: support of motion to impound and preserve any and all tape recordings,etc.
7-30-75 J. Stassi-filed memo. in support of motion to inspect Grand Jury minutes.
7-30-75 J. Stassi-filed notice of motion re: "mail cover".
7-30-75 J. Stassi-filed notice of motion re: discovery of certain matters pertaining to the Grand Jury which returned the instant indictment
7-30-75 J. Stassi-filed memo. in support of motion requestingearly discovery of Jencks material.
7-30-75 J. Stassi-filed memo. of law in support of motion for discovery of materi pertaining to or resulting from electronic surveillance or "
7-30-75 J. Stassi-filed notice of motion re: discovery of materials pertaining to resulting from electronic surveillance.
7-30-75 J. Stassi-filed memo. of law in support of motion for discovery of materi pertaining to or resulting from that type of electronic surveil known as "consensual eavesdropping."

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Docket Continuation

	PROCEEDINGS	Date Order Judgment N
7-30-75	J. Stassi-filed notice of motion re: early disclosure of Jencks Act material.	
7-30-75	J. Stassi-filed memo of law re: support of motion to dismiss because of the deportation of co-deft. Jean Claude Otvos.	
7-30-75	J. Stassi-filed notice of motion re: impound and preserve any and all tape recordings and/or transcripts of any electronic surveillance, eavesdropping, and/or consensual eavesdropping.	
-30-75	A. Stassi-filed notice of motion re: dismiss indictment for lack of prosecution.	
-30-75	J. Stassi-filed notice of motion re: dismiss because of deportation of co-deft. J. Otvos.	
-30-75	J. Stassi-filed notice of motion re: bill of particulars.	
-30-75	J. Stassi-filed memo. of law re: support of motion for b/p.	
-30-75	J. Stassi-filed notice of motion re: adopt other pretrial motions and memoranda of law in support thereof.	
-30-75	C. Consalvo-filed notice of appearance of atty. P. Wall.	
-30-75	C. Alaimo-filed notice of appearance of atty. G. Newman.	
15-75	Filed deft. J. Stassi's notice of motion re: discovery and inspection.	
15-75	Filed deft. J. Stassi's memo. of law re: support motion for discovery and inspection.	
-18-75	Filed Govt.'s affdvt. in response to discovery motions of William Sorenson.	
21-75	Filed Govt.'s b/p.	
2-75	Filed Govt.'s affdvt. inopposition to defts. Anthony and Joseph Stassis' motions to dismiss.	
2-75	Filed Govt.'s b/p.	
2-75	Filed Govt.'s affdvt. in response to J. Stassi's motion concerning electronic surveillance.	
2-75	Filed Govt.'s memo. in opposition to the various motions of deft. A. Stassi.	
2-75	Filed Govt.'s memo. in opposition to deft. J. Stassi's several motions for pre-trial relief.	
5-75	Filed Govt.'s suppl. bill of particulars.	
-16-75	Filed Govt.'s memo. in support of admissibility of evidence of certain acts and declarations of co-conspirators in 1973.	
17-75	Filed one envelope ordered sealed and placed in vault in room 602. Duffy, J.	
8-75	Filed Order that M. Perna be transported to and from the office of the U.S. Atty. S.D.N.Y. for the period from 9-16-75 to 10-6-75 and thereafter during the trial of the above captioned matter. Duffy, J. m/n	

	PROCEEDINGS
24-75	Filed One envelope ordered sealed and placed in vault, room 602. Duffy,J.
09-29-75	Filed deft. Wm. Sorensen's notice of motion to adopt motions of co-deft. J. Stassi,etc. ret: 10-14-75.
09-29-75	Filed document ordered sealed by the Court and placed in the vault of the Clerk's Office in room 602, to be opened only by order of the Court.--Knapp,J.
10-1-75	Filed memo-end. on motion docketed 9-29-75 of Wm. Sorensen to adopt motions of co-deft. J. Stassi and supporting affirmation... Motion granted, for the reasons stated on the record in open court 9-19-75. Knapp,J. m/n
10-1-75	Filed memo-end. on motion of J. Stassi docketed 7-30-75 for bill of particulars...motion denied for the reasons stated on the record in open court. Knapp,J. m/n
10-1-75	Filed memo-end. on motion of J. Stassi docketed 8-15-75 for discovery and inspection ...Motion denied for the reasons stated on the record in open court. Knapp,J. m/n
10-1-75	Filed memo-end. on motion of deft. J. Stassi docketed 7-30-75 for "mail cover"etc, ...motion denied for the reasons stated on the record in open court. Knapp,J. m/n
10-1-75	Filed memo-end. on motion of J. Stassi for discovery of materials pertaining to or resulting from that type of electronic surveillance known as "consensual eavesdropping"...motion denied. for the reasons stated in open court on the record. Knapp,J. m/n
10-1-75	Filed memo-end. on motion docketed 7-30-75 of deft. J. Stassi for early disclosure of Jencks Act. Material,etc...Motion denied. for the reasons stated on the record in open court. Knapp,J. m/n
10-1-75	Filed memoe-end. on motion docketed 7-30-75 of deft. A. Stassi to adopt other pre-trial motions and memoranda of law in support. etc...Motion granted for thereasons stated in open court and on the record. Knapp,J. mn
10-1-75	Filed memo-end. on motion docketed 7-30-75 of deft. J. Stassi to adopt other pre-trial motions and memoranda of law in support thereof...Motion granted for the reasons stated on the record in open court. Knapp,J. m/n
10-1-75	Filed memoend. on motion docketed 7-30-75 of deft. J. Stassi for discovery of materials pertaining to or resulting from electronic surveillance,etc... motion denied for the reasons stated on the record in open court. Knapp,J.mn/
10-1-75	Filed memo-end. on motion docketed 7-30-75 of deft. J. Stassi to impound and preserve any and all tape recordings and/or transcripts of any electronic surveillance,eavesdropping, and/or consensual eavesdropping,...motion denied for the reasons stated on the record in open court. Knapp,J. m/n
10-1-75	Filed memo-end. on motion of deft. J. Stassi docketed 7-30-75 for discovery of certain matters pertaining to the Grand Jury which returned the instant indictment,etc...Motion denied for the reasons stated on the record in open court. Knapp,J. m/n
10-1-75	Filed memo-end. on motion docketed 7-30-75 of A. Stassi to reconsider disclosure of name of informers and recordings of conversations with informers,etc. Motion denied. Knapp,J. m/n
10-1-75	Filed memo-end. on motion docketed 7-30-75 of A. Stassi to reconsider disclosure of recordings and transcripts of consensual eavesdroppir etc. Motion denied. Knapp,J. m/n

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PAGINATION AS IN ORIGINAL COPY

Continuation

	PROCEEDINGS	Date Ordered
.75	Filed ORDER that Anthony Verzino may be transported to and from the Office of the AUSA SDNY and the Bergen County Jail Annex by any agent of the Drug Enforcement Adm. at such times as is necessary during the period from 9-27-75 to 10-30-75 and thereafter during the trial of the above-captioned matter. Knapp,J. m/n	
0-02-75	Issued writs of habeas corpus ad testificandum as to A. Anderson, F. Williams, T. Callahan, J. Mendez, J. Lacaze, M. Sacacasas, J. Orsini, R. Perez, H. Finkelstein, J. Welty, E. Bishop, T. Pyrel, S. Jaramillo, G. Bowdack, P. Forrest, S. Herbert, H. Ruth, H. Robins, S. Mangiameli, H. Hamilton, A. Jackson, J. Miller, J. Newma L. Borman, J. Malone and N. Rothman all returnable 10-14-75 pursuant to oral order of Judge Whitman Knapp, 10-02-75	
0-07-75	Filed affdvt. of James E. Nesland re: writ of habeas corpus ad pros. for J. Stassi ret: 10-14-75.	
0-01-75	Filed affdvt. for writ of habeas corpus ad pros. for Wm. Sorenson. Writ issued. Ret. 10-02-75.	
10-29-75	Filed ORDER that Jason Lynott be released from the writ executed by this Court, and that he be returned to the U.S. Penetentiary in Atlanta, Georgia immediately. Knapp,J. m/n	
-03-75	Filed ORDER that the items which were sealed on 6-25-75 pur. to order dated 6-20-75 signed by Judge Knapp, shall be unsealed. Knapp,J. (Orig.)	
1-6-75	Filed writ of habeas corpus ad testificandum for Allen Barber and marshal's return: writ returned unexecuted, Inmate not located at Trenton St. Prison.	
-14-75	Defts. J. Stassi (Edward Garland, Esq.) A. Stassi (Mark Kadish, Esq.) William Sorenson (Ralph Naden, Esq.,) and Charles Alaimo (Gustave Newman) (and attys.) in parenthesis. present. J. Stassi, A. Stassi & Sorenson arraigned and plead not guilty. Hearings held on motions. Knapp,J.	
0-15-75	Trial begun before Judge Knapp. (with jury)	
0-16-75	Trial cont'd.	
0-17-75	Trial cont'd.	
0-20-75	Trial cont'd.	
21-75	Trial cont'd.	
0-22-75	Trial cont'd.	
0-23-75	Trial cont'd.	
-28-75	Trial cont'd.	

cont'd. on next page

PROCEEDINGS | Date Order Judgment No.

Transcript of record of proceedings, dated Dec 12, 16, 19 20, 1975

Transcript of record of proceedings, dated Dec 8, 22, 23, 29, 1975.

23-75 Transcript of record of proceedings, dated Nov 6, 7, 10, 11, 12, 1975.

23-75 Filed transcript of record of proceedings, dated Nov 20, 21, Dec 3, 1975.

23-75 Filed transcript of record of proceedings, dated Dec 29, 30 Nov 3, 4, 5, 1975

23-75 Filed transcript of record of proceedings, dated March 31, 12 19, 1975

16-75 Filed deft. A. Stassi's notice of appeal from order of 12-03-75. Mailed copies.

9-75 Filed deft. Wm. Sorenson's partial response to information.

9-75 Filed w/h/c ad pros for Wm. Sorenson. 12-11-75 wrt satisfied. Knapp, J.

Deputy Clerk

A

[illegible]

in the Southern District of New York, and elsewhere:

1. In or about February and March, 1970, defendants JOSEPH [illegible], a/k/a Joe Bowens, [illegible] GROSS and co-conspirators Louie Bonna and Anthony [illegible] held meetings in the Federal Penitentiary, Atlanta, Georgia, and agreed to arrange for the importation of heroin from France to the United States.

2. In or about March, 1970, defendant JOSEPH [illegible], a/k/a Joe Bowens, contacted defendant [illegible] to make arrangements for importing heroin from France and distributing said heroin in the United States.

3. In or about March, 1970, defendant [illegible], a/k/a Bobby, while still incarcerated at the Federal Penitentiary, in Atlanta, Georgia, met with co-conspirators Louie Bonna and Anthony [illegible] and agreed to assist defendant [illegible] in importing and distributing heroin.

[illegible] heroin for the United States.

3. In or about [illegible], 1970, defendant [illegible], a/k/a "Tony," while still free on bail on the federal heroin charge in Atlanta, Georgia, met with co-conspirators [illegible] and Anthony Verdino and agreed to assist defendant [illegible] in importing and distributing heroin.

4. In or about May, 1970, defendant ANTHONY [illegible] met with defendant JIMMY CUTOLLI, a/k/a "the Uncle," and negotiated for the importation of approximately 120 kilograms of heroin from France to New York City.

5. In or about May, 1970, co-conspirator Michel Pastantuono ordered a Citroen automobile in Paris, France.

6. In or about September, 1970, co-conspirator Michel Pastantuono drove a Citroen automobile from Biarritz to Paris, France, where it was transported to Montreal, Canada.

7. In or about September, 1970, co-conspirator Michel Pastantuono drove a Citroen automobile from Montreal,

[illegible]

The Grand Jury further charges:

In or about [illegible] 1971, in the [illegible] of New York, [illegible], a/k/a Joe Rogers, [illegible], JEAN CLAUDE [illegible], [illegible] ALFANO and [illegible], the defendants, [illegible] knowingly and [illegible] a Schedule I narcotic drug [illegible] to wit, approximately [illegible] of heroin.

(Title 21, United States Code, Sections 812 [illegible])

[illegible]

The Grand Jury further charges:

In or about June, 1971, in the Southern District of New York, JOSEPH [illegible], a/k/a Joe Rogers, [illegible], JEAN CLAUDE [illegible], [illegible], a/k/a Bobby, [illegible] COLTRANO and CHARLES ALFANO, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 70 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).

FOREMAN

PAUL J. CURRAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

- v - : S 75 Cr. 502 (W.K.)

JOSEPH STASSI, et al., :

Defendants. :

GOVERNMENT'S MEMORANDUM
IN SUPPORT OF ADMISSIBILITY
OF EVIDENCE OF CERTAIN ACTS
AND DECLARATIONS OF
CO-CONSPIRATORS IN 1973

This memoradum is submitted in support of the Government's contention that the acts and declarations of the defendants and conspirators in 1973 are admissable at the trial of the defendants against all of them.

The Grand Jury charged in Indictment S 75 Cr. 502 that defendants and their conspirators conspired to violate the Federal narcotics laws from on or about January 1, 1970 up to and including December 30, 1972. To prove that conspiracy, the government intends to offer at trial evidence of various acts and conversations of defendants and co-conspirators which took place subsequent to December, 1972. As will be discussed more fully hereafter, that evidence reveals that the conspiracy in this case did not

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end in December, 1972 but continued throughout 1973. Moreover, even if the conspiracy were found to have terminated on December 31, 1972, a finding which would not comport with available evidence, it is the Government's further contention that proof of the conversations and activities among defendants and their conspirators in 1973 would be admissable under recognized legal principles permitting proof of other crimes offered for a purpose other than to establish that defendants have a criminal character. Here, it would establish that defendants and co-conspirators engaged in an unsuccessful joint venture in 1973 to import heroin from France to Canada.

There is no question that statements of a conspirator during the course of and in furtherance of a conspiracy are admissable against all other members of the conspiracy to prove the existence of the conspiracy. See Section 801(d)(2), Federal Rules of Evidence. And to convict the defendants of the conspiracy charged in this case, the government must prove that the conspiracy existed during the period alleged in the indictment, that is, between January 1, 1970 and December 31, 1972. Although those dates require the Government to satisfy the jury of the existence of a conspiracy within that time period, they do not bar the Government from proving activities done

either before or after the stated period relevant to show the existence of the conspiracy alleged and the membership of any defendant therein. In short, the time period alleged in the indictment governs only to the extent that it requires the government to prove the conspiracy existed between the dates of January 1, 1970 and December 31, 1972. It does not restrict the Governments evidence to activities only within that period.

Simply because the Grand Jury charged that the conspiracy was in existence from at least January 1, 1970 to December 31, 1972 does not establish as a matter of fact or law that the conspiracy terminated on the latter date. Accordingly, for purposes of determining whether or not evidence of declarations of conspirators is admissible, the issue is simply whether or not as a matter of fact the conspiracy existed when the declarations were made, and not whether the declaration was made within the time period alleged in the indictment. United States v. Dennis, 183 F. 2d 201 (2d Cir. 1950), aff'd, 341 U. S. 494 (1951).

In United States v. Dennis, supra, defendants were charged as members of a conspiracy alleged in the indictment to have existed from 1945 to 1948. The government offered at trial evidence of a host of declarations by defendants made prior to 1945. Making it absolutely

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clear that declarations of a co-conspirators made outside the period of the conspiracy alleged in the indictment were admissable against all conspirators if in fact the conspiracy existed at the time the declarations were made, Judge Hand stated:

> "There can be no logical reason for limiting evidence to prove that the defendants were in a conspiracy between 1945 and 1948 to the period of the charge; if they were in the conspiracy earlier, declarations of any one of them or if any other person acting in concert with them are as competent as those made within the period laid." 183 F.2d at 231.

In a recent consideration of that same issue, Judge Joseph Lord reaffirmed that for purposes of admitting declarations of co-conspirators "[t]he 'pendency' of the conspiracy relates to the period during which the conspiracy, in fact, existed and is not restricted to the period charged in the indictment." United States v. Barrow, 229 F. Supp. 722, 731 (E.D. Pa. 1964), aff'd 363 F.2d 62 (3rd Cir. 1966), cert. denied 385 U.S. 1001 (1967). See also, United States v. Ledesma, 499 F.2d 36 (9th Cir. 1974).*

* The fallacy of assuming that the period stated in the indictment governs the admissibility of declarations of co-conspirators is further illustrated by the principle that, if a conspiracy or joint venture is shown to exist, declarations are admissable even in the absence of a conspiracy allegation in the indictment e.g., United States v. Zane, 495 F.2d 683 (2d Cir. 1974).

As a matter of law, a conspiracy is presumed to continue until the arrest of the central members of the conspiracy. E.g. Grunewald v. United States, 353 U.S. 391, 401-02 (1957); Krulevitch v. United States, 336 U.S. 440, 442 (1949). In this case, none of the defendants or conspirators were arrested until 1974. Accordingly, in the absence of any evidence that the conspiracy terminated before 1974 it must be considered to have continued through 1973 and declarations of conspirators made in 1973 in furtherance of the conspiracy are admissable at trial.

Even were the conspiracy found to have terminated in December, 1972, contrary to the evidence that it had not, proof of actions of defendants and conspirators in the conduct of a similar joint venture to import heroin after the termination of the conspiracy would be admissable to establish that the conspiracy in fact was in existence and was participated in by defendants. See Anderson v. United States, 417 U.S. 211, 219 (1974); Lutwak v. United States, 344 U.S. 604 (1953); United States v. Super, 492 F.2d 319, 323 (2d Cir. 1974); United States v. Nathan, 476 F.2d 456, 459-60 (2d Cir. 1973). Such post conspiracy activity constitutes evidence establishing that, after the charged conspiracy terminated, the defendants together committed

[illegible]
d-9m2

[illegible] are charged against them in the indictment. Of course, such similar acts are not direct proof of the conspiracy in the same sense as proof of acts committed within the period of the conspiracy, but it is admissible to establish that defendants and their co-conspirators had the same relationship and association in 1973 as is charged against them for the years 1970-72. As such, it is probative of the existence of the conspiracy and defendants' membership in that conspiracy. United States v. Fuger, supra. United States v. Jotman, supra; United States v. Carello, 438 F.2d 366 (2d Cir. 1970), cert. dismissed, 401 U.S. 967 (1971). See United States v. Miller, 478 F.2d 1315 (2d Cir. 1973); United States v. Persico, 425 F.2d 1375 (2d Cir.), cert. denied, 400 U.S. 869 (1970).*

These cases above involve proof of criminal activities both preceding and following the criminal activities for which the defendants were indicted and on trial. It is settled law that the sequence of the criminal activities sought to be proved is of no consequence. Rather, admissibility of other criminal activities, whether committed before or after the crimes charged in the indictment, is

* The evidence of such subsequent similar acts is freely admissible for a number of other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. Fed. Rule Evid. 404(b).

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controlled by a determination of the similar nature and proximity of the particular criminal activities offered as similar acts. See United States v. Rodriguez, 470 F.2d 587, 590 (5th Cir. 1973); United States v. Smith, 343 F.2d 607, 609 (2d Cir. 1965). In this case, the proof the Government offers concerns meetings of defendants Joseph and Anthony Stassi, William Sorenson, and co-conspirators Anthony Verzino, Mario Perna and Joseph Condello in 1972 and 1973 designed to successfully plan another shipment of heroin from France into Canada, there to be received and paid for by defendants and their co-conspirators. So far as the Government's evidence reveals, the latter plan did not succeed.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

JAMES L. NESLAND,
THOMAS H. SEAR,
Assistant United States Attorneys

-Of Counsel-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

:

:

BILL OF PARTICULARS

:

375 Cr. 502 (W.K.)

JOSEPH STASCI, et al.,

:

Defendants.

:

The Government hereby submits the following as its bill of particulars in response to the motion of defendant JOSEPH STASCI in the above-entitled action:

Demand No. 1. France, Canada and the United States are the only countries from, to and through which it is presently known defendants and their co-conspirators operated heroin.

Demand No. 9. The meetings alleged in Overt Act One occurred between and among various of defendants and co-conspirators at various places within the confines of the United States Penitentiary in Atlanta, Georgia, including the yard, the corridor, the clothesroom, and elsewhere.

Demand No. 10. At various dates in March and April, 1970, the precise dates being presently unknown.

Demand No. 11. During the months of March, April and May, 1970, the precise date being presently unknown.

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71-1033

Demand No. 15. Presently unknown.

Demand No. 16 and 19. Except as alleged in Overt Act Four, the location and time of the meeting between defendants ANTHONY STASSI and JEAN GUDICELLI is presently unknown.

Demand No. 20. On or about May 29, 1970.

Demand No. 22. Agent, Champs Elysees
Citroen Service Triptyque
Paris, France

Demand No. 23. On or before September 9, 1970.

Demand No. 25. Transports Mondiaux, S.A.
44 Rue Francois
Paris 8, France
(SS Ornefjell)

Demand No. 26. Between September 9 and 17, 1970.

Demand No. 27. On or about September 17, 1970.

Demand Nos. 28 - 29. No.

Demand No. 31. No.

Demand No. 32. Presently unknown.

Demand No. 33. Yes.

Demand No. 36. On or about September 27, 1970.

Demand No. 38. No.

Demand No. 39. Yes.

Demand No. 40 and 44. On or about September 28, 1970.

Demand No. 45. Fifth Avenue, Manhattan.

Demand No. 46. On or about September 28, 1970.

Demand No. 42. The Government will contend the garage was located in Larchmont, New York.

JEF:[illegible]
74-[illegible]

Demand No. 50. Yes.

Demand No. 53. On or about September 28, 1970.

Demand No. 56. Yes.

Demand No. [illegible]. The Government will contend that the street address may be either 19 or 23 Holly Place, Larchmont, New York.

Demand No. 61. Except as alleged in Overt Act 12, the precise date is unknown.

Demand No. 62. Presently unknown.

Demand No. 64. No.

Demand No. [illegible]. Jean Cardon

Demand No. 67-68. Presently unknown.

Demand No. 69. Presently unknown.

Demand No. 73. On or about June 21, 1971.

Demand No. 75. Montreal, Canada.

Demand No. 76. Yes.

Demand No. 77. Presently unknown.

Demand No. 78. Jean Cardon

Demand No. 81. On or about June 21 or 22, 1971.

Demand No. 82. The Government will contend the delivery of heroin may have taken place at 455 9th Street, Palisades, New Jersey.

Demand No. 85. Yes. Ditto.

Demand No. [illegible]. On or about September 27, 1970.

Demand No. [illegible]. France.

JEN:
74-[illegible]

Request No. 21 and 22. On or about September 27, 1970 and thereafter.

Request No. 96. On or about June 21, 1971.

Request No. 97. Denied.

Request No. 99. On or about June 21 or 22, 1971 and thereafter.

Dated New York, New York
August 23, 1973

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: James E. Nesland
JAMES E. NESLAND
Assistant United States Attorney

TO: Edward T.M. Garland, Esq.
1012 Candler Building
Atlanta, Georgia 30303
Attorney for JOSEPH STASSI

JL:jlf
74-4043

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : SUPPLEMENTAL BILL OF PARTICULARS

-v- : S 75 Cr. 502 (W.K.)

JOSEPH STASSI, et al.,

Defendants. :

----------x

The Government hereby submits the following as a Supplemental Bill of Particulars in the above-entitled action:

1. The Government contends the conspiracy alleged in Count One continued throughout the years 1970 through 1973.

2. The Government contends that defendants Joseph and Anthony Stassi, William Sorenson and co-conspirators Anthony Verzino, Mario Perna, Joseph Condello and others unknown had meetings on various occasions in 1972 and 1973 to make arrangements for the importation of heroin from France into Canada, there to be received and paid for by said defendants and co-conspirators.

3. The Government will contend that the principal meetings had by said defendants and co-conspirators in 1973, although there were others which will be proved, were as follows:

(1) Between the months of April and August, 1973, defendant Anthony Stassi had a meeting with co-conspirators Mario Perna and Ernest Malizia at the Casa Del Monte Restaurant, 158 W. 72nd Street, Manhattan.

(2) Between the months of April and August, 1973, defendants Anthony Stassi, and William Sorenson had a meeting with co-conspirators Mario Perna and Ernest Malizia at Arlone's Restaurant, Brooklyn.

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(3) Between the months of April and August, 1973, defendants Anthony Stassi and William Sorenson had a meeting with co-conspirators Mario Perna and Ernest Malizia at a diner on Fourth Avenue, Brooklyn.

(4) In the months of October and November, 1973, defendant William Sorenson had meetings with co-conspirator Joseph Condello at Sorenson's apartment and at the Evergreen Bar located in Brooklyn.

4. The following persons are co-conspirators presently known by the Government to have participated in the conspiracy alleged in Count One:

Edmond Taillet
Danielle Quinet
Noella LAU
Ginette LAU
Max LAU
Robert Cautilier
Joseph Signoli
Richard Berdin
Albert Pierro
Daniel Gerard
Felix Rosso
Roger Friess
Paul Graziani
Donald Compitello
Jo LAU
Salvatore Autura
Robert Le Noir
Cuzzie Perna
Patrick LAU
Gerard Otvos
Ernest and Patsy Malizia
William Bentventna
Suzie Verzino
Charles Kenney
Joseph Condello
Thomas Papatas
Edward Line
Vincent Marconi

Dated: New York, New York
September 12, 1975

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: _____
JAMES E. WESLAND
Assistant United States Attorney

J. :ill
74-4.43

TO: Edward [illegible] M. Garland, Esq.
Mark J. Kadish, Esq.
Suite 1012
Candler Building
Atlanta, Georgia 30303

[illegible] [illegible] [illegible], Esq.
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New York, New York 10007

Gustave H. Newman, Esq.
522 Fifth Avenue
New York, New York 10036

United States of America
v.
Joseph Stassi, et al.

CHARGE OF THE COURT

(Knapp, J.)

(Jury in box.)

THE COURT: Ladies and gentlemen, before we get to the charge I have one bit of housekeeping. Some of defense counsel were concerned that you may think the reason they did not answer Mr. Nesland is that they had nothing to say. The reason they did not answer is they were not allowed to under the rules. The rules are that first Mr. Nesland speaks then they speak, and then Mr. Nesland speaks and then I s

One other thing that Mr. Kadish asked me to cal to your attention is the passport application, that on there there are the number of previous trips abroad within the last 12 months asked for, and that this says 11 to 12, and then there is a mark after that 11 to 12 which may or may not be a question mark. You will look at it if you wish to.

Let me now give you some preliminary logistics as to what is going to happen. In the first place, in a shorter case I try to deliver the charge more or less extemporaneously, because that is much easier for me and for you, rather than looking down at notes. But in a case

that has been going this length of time you get to be long winded if you do that. So I will follow my notes fairly carefully.

But that leads to another question: When one is following notes one tends to drop one's voice. And it is no secret that the acoustics in this room leave a lot to be desired. If anyone has at any time any trouble hearing me, please speak up and I will deem it a favor. If I drop my voice -- and this applies to defense counsel -- I would take it as a favor if anyone will call it to my attention, if you feel that you are not hearing or the jury is not hearing.

First I am going to charge you and then I am going to have a short recess while counsel for either side not in your presence can make suggestions, criticisms, requests for different instructions, in other words, point out wherein they think I have not told you the law as it should be told. The reason I say that to you, I just want you to be aware, because when I send you out at that point it is going to be the last time that I am going to say don't form or express an opinion, and even though it is the last time, it is still important. It is my purpose to give you the law correctly in the first place. But that may not be so. You have seen counsel on several occasions convince me I am wrong at one time or another, and it may well be that counsel for one

side or the other will call my attention to some significant thing that I either omitted or where I misspoke myself. So I am going to ask at that time for the last time you keep your minds open until I finally give you the law as I settle upon it to be.

Now, in this charge I am first going to refer briefly to the issues and then outline the general principles which the law has developed for guidance in dealing with these issues. Then I am going to discuss with you the specific crimes set forth in the indictment.

What, then, are the basic issues? As I indicated to you just before summations began, the first question you must decide: Was there a conspiracy hatched in the Atlanta penitentiary by and among Mario Perna, Anthony Verzino, Jean Claude Otvos and Joseph Stassi -- or any two of them -- to import heroin from France for distribution in the United States?

Second: if so, did any one or all of the defendants on trial at any time become wilful and knowing participants in that conspiracy?

If you answer the first question in the negative, why that of course ends your deliberations, because under the theory upon which this case has been tried there will be nothing else for you to consider. However, if you answer

the first question in the affirmative beyond a reasonable doubt and give a similar answer to the second question as to one or more of the defendants, then certain other consequences will follow, which I will discuss with you later in this charge.

So much, for the time being, for the questions with which you are confronted. Let me turn to the general rules the law has developed for your guidance in dealing with those questions.

In the first place, as I have told you before, it is you who must weigh the facts. Nothing that I may say about the facts or that you may conceive that I think about them has any relevance whatever. It may surprise you to learn that I don't have to tell you that. Under the federal law I have the power, if I wish to exercise it, to tell you exactly what I think about the facts and what I think about the credibility of various witnesses, just so long as I make it clear to you that you are not bound by my views on such subjects. Why do I tell you that I have such power if I don't propose to exercise it? Simply for this reason:

I want you to thoroughly understand that it is my profound conviction that the jury system only works if, indeed, the jury totally disregards anything that they may think the judge feels about the facts. So I just want you

to realize I am not telling you this to take care of some formality I have to meet; I am telling you this because it is my profound conviction that, unless you follow this particular instruction, justice may not be done in this case.

As finders of the fact you will, of course, be judges of the credibility of the witnesses. There is no mystery about how you judge the credibility of witnesses. Every day in your life you have occasion to judge the credibility of people with whom you come in contact, members of your family, your friends, business associates, competitors, everybody who speaks to you wants you to believe what he or she says, and in the course of your daily existence you develop certain criteria or antenna by which you judge the weight you will put on what people are saying to you.

The theory of the jury system is that it is better to have the judgment of 12 persons than of one person. After all, if any one person has to make a decision as to the credibility of these witnesses, he or she would only have one set of criteria, one set of life experiences, his or hers, to go by. The jury, on the other hand, has 12 such sets, and the law says -- and I agree with it -- that a sounder result is reached if the 12 of you pool your common experiences in making your decisions.

Of course, that only works if you do what the law contemplates, namely, discuss the matter with each other with an open mind so that each of you can get the benefit of the experience and judgment of the others.

Incidental to your function in this regard is the rule that your recollection of the facts controls. What I may remember or what counsel may remember is wholly immaterial. It is your recollection that controls, and if you have any question about anything that seems important to you, you can have the stenographer read back pertinent parts of the testimony. Even then if you disagree with what the stenographer reads back, your recollection controls. We are all fallible, and you are fallible too, but the law places the responsibility on you.

If your recollection is different from what the stenographer has done and if after giving due weight to the stenographer's expertise you still conclude that your differing recollection is correct, you have just got to assume that the stenographer made a mistake. As I say, we are all fallible, but the law places the responsibility on you and you must make the decision.

Now, the law does have certain guidelines. One is that you are entitled to take into account the interest any witness may have in the outcome of this action.

To start off, defendant, obviously, has an interest. He wants an acquittal. That is his interest. The defendants, on the other hand, claim that various of the government witnesses, including government agents, had motives to falsify -- to some of which claims I will refer later-- and that you should regard them as interested witnesses.

The point is that it is for you to say whether and to what extent any witness has an interest in the outcome of the case, and, if so, whether and to what extent such interest has influenced his or her testimony before you. Obviously, you just don't reject a witness out of hand because he or she may have an interest, but you consider the extent of such interest and decide what effect, if any, it had on the testimony.

Isn't that what you do in everyday life? Most people who talk to you have an interest in having you believe what they say. Otherwise, by and large, they wouldn't bother to say it. In everyday life you take their interest into account in evaluating what they tell you, and that is precisely what you do in the jury room.

With respect to the witnesses Perna, Condello, Verzino, Mastantuono and Ouimet, there is a related consideration that comes into play. According to their own testimony, these witnesses are -- or in the case of Condello maybe --

guilty of the very crimes charged against these defendants. The law calls any such person an accomplice. An accomplice is a man or woman that could be convicted of the very crime that is on trial.

The law says that you are entitled to act on the testimony of such a person, but that you must subject it to special scrutiny. That is plain common sense. Obviously, any person subject to prosecution for crimes may either have, or think he has, an interest in ingratiating himself with the government by testifying on the government's behalf. Obviously, it is more comfortable to be on the witness stand than in the defendant's box. Therefore, the law says -- and it is plain common sense -- that you should take these factors into account in weighing the testimony of such a witness.

However, the law also says if after having taken those factors into account you come to the conclusion that the witness has given truthful testimony, i.e., factually accurate testimony, you may act upon it exactly as you would upon that of any other witness.

Now, that is the general rule about accomplice testimony. But as the question of the veracity of these accomplice witnesses is so vital, I will go into the matter in more detail. I am going to discuss the question with

respect to the witness Perna, not because I think he is more or less important than any other witness -- that is a judgment entirely within your province -- but because his testimony came first in time and because the principles stated as to him can be applied, to the extent you find proper, to any of the other accomplice witnesses. Now, what are some of the considerations relevant to your evaluation of Perna's testimony?

First, as he readily admits, his life has been of crime;

Second he has lied on various occasions and on, at least, one occasion committed perjury by executing a false affidavit;

Third, his sole reason for deciding to cooperate and become a government witness was the hope that he could thus avoid almost certain incarceration for the rest of his life, and that he could save his wife from a similar fate;

Fourth, although the government neither could nor would promise him that this hope would be fulfilled, he insisted that the government put in writing his promise to advise the judge before whom he is to be sentenced -- Judge Irving Ben Cooper of this court -- of any cooperation that he might render, and to give similar information to the Board of Parole.

Those are some of the considerations you must obviously ponder in considering Perna's testimony. But let me emphasize that they are only relevant to the question of whether his testimony is factual and accurate. If you should conclude that his testimony was factual and accurate, it would be your duty to act upon it. It would, indeed, be a violation of your oath of office if you decline to act on testimony which you find to be factual and accurate simply because you disapprove of its source. What I am getting at is that it is no concern of yours or mine whether the government should or should not have made these arrangements with Perna. That may well suggest a problem for Judge Cooper when he comes to impose sentence. Our only concern here is whether Perna's testimony was factual and accurate insofar as it is material to the issues which you are to decide.

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But let me come back for a moment to the written contract between Perna and the government. That contract, you will recall, provides in effect that all bets are off if, in the government's opinion, Perna varies from the absolute truth in any of his testimony. Now you have heard a lot about that phase of the contract. Its only importance here is what you think Perna understood as the meaning of "truth" in that context. Did he, as the defendants suggest,

understand "truth" to be a code word or whatever the government might want to hear? Or did he, as the government urges, accept the word at its face value? As to that, let me emphasize that it is wholly unimportant what the government meant by that provision in the contract. Nobody here is challenging Mr. Nesland's good faith. The important question, and the only relevant question is, what do you find that Mr. Perna understood by it? Do you find that he in his own heart believed that Mr. Nesland wanted only the truth? Or was it his conception that Mr. Nesland would declare the contract forfeit if Perna fails to come up with convincing testimony regardless of its accuracy.

As I have indicated, these general principles, with wide variations as to detail, apply to all the accomplice witnesses. You have heard the arguments on both sides, and it is not my purpose to repeat them.

With respect to these witnesses, indeed, with any others, it is your responsibility to consider any hopes they may harbor in their breast or any pressure they may feel to be under in determining to what extent, if any, such hopes or pressures may have affected their testimony. However, once you have decided, if you ever do decide, that any or all the testimony of any witness, either for the prosecution or the defense, is factually accurate, you may, and, indeed,

you must, act on such factually accurate testimony.

There is another rule of general application, which is that if you find that any witness who has testified before you has deliberately lied on a material matter, that is, a matter important to this case, you may, if you wish, reject and disregard everything that particular witness has said. But you are not required to do so. You may reject that part of his or her testimony that you find to be untruthful and accept and act upon such part as you find truthful. Now, again, that is just common sense. In your ordinary experiences some people may have told you a lie and you say to yourself, "I am never going to believe anything he or she may ever say again. Life is too short to be bothered by trying to sort out truth from falsehood as far as this particular person is concerned." On the other hand, you may, after some person has told you even some outrageous lie, consider the motives which caused the person to lie and conclude that in the future you will believe him or her if you find such motives not to exist. Like everything else, you act in the same common sense way you would in your daily lives. Remember, this rule only applies to testimony that is wilfully false; it has no application to mistakes. And that, again, is common sense.

Now, when several witnesses were on the stand,

one party or the other called his or her attention to prior statements made by the witness which either were or were claimed to be inconsistent with something the witness had said on the stand. Now, such prior statements fall into two categories: those made not under oath, such as statements claimed to have been made to various government agents, for example; and then those statements made under oath, such as made before a grand jury, for example, those made by the witness Mastantuono before the grand jury and in the letters rogatory.

The rule with respect to the first category, those not under oath, is that such prior statements have no value of their own as evidence. They may not be used to establish any fact not otherwise proved. Their only proper function is to permit you to evaluate the sworn testimony of the witness as given before you. To the extent that you find such statements helpful for that purpose you should consider them. Otherwise, ignore them.

With respect to the second category, those under oath, the rule is otherwise. Prior statements under oath, a prior statement made by a witness after taking an oath, may in your discretion be used as affirmative evidence of facts contained therein. Of course, you don't have to use them for that purpose and you should not do so, unless

satisfied that they, in fact, represent the truth.

In this connection you will recollect that Mastantuono gave testimony before two grand juries and in the letters rogatory which tended to exonerate these three defendants in the station wagon transaction. Should you find this grand jury testimony and rogatory testimony to be truthful, you may use it as affirmative evidence to support the defense. If, of course, you find it not to be truthful, you should ignore it.

Perhaps this is a good time to bring up the question of association testimony, about which you have heard a great deal. Where a person is charged with conspiracy, the law allows evidence of association, even wholly innocent association, with his alleged co-conspirators, both indicted and unindicted. The theory is that people engaged in a joint enterprise may be more likely to be found together than those not so engaged. But it must be obvious to you that association in and of itself proves nothing. There could be any number of reasons why the defendants socialized with each other, for example, as I indicated, when you were being chosen, nothing could be more natural than two brothers associating with each other. Similarly, you might well consider it natural that persons thrown together in jail would continue to associate with each other after their

release.

The point that after giving it the cautious treatment I have indicated, you may use evidence of association, along with all the other evidence in the case, in determining whether or not guilt has been established beyond a reasonable doubt. I suppose, in the final analysis, it would be your views as to the nature of the association testimony that will control, what importance, if any, you attach to it.

At this point I might interject a thought, obviously, the fact that these defendants are now associating with each other during the trial is of no consequence whatever. That association is wholly involuntary. Assuming they had never seen each other in their respective lives before, they would have a government-induced joint interest now in acquittal, and, obviously, that government-induced joint interest is going to cause their lawyers to associate with each other and may well cause them to associate with each other during the course of this trial. No inference of any sort can be drawn from that. It sounds obvious when you say it, but if you don't say it, someone might not think of it.

Now, changing the subject a bit, there is one peculiarity in this case with respect to the lawsuit against

the defendant Alaimo. You will recall that Mr. Nesland told you that the only direct evidence against him constituted his participation in the Citroen and station wagon delivery. The witness Mastantuono was the only one giving that evidence. Therefore, you may not convict the defendant Alaimo unless satisfied beyond a reasonable doubt that Mastantuono correctly identified him as participating in those two deliveries.

This brings me to the question of reasonable doubt. Let me define that term for you. The words really define themselves. When you analyze it, it is common sense.

In a civil case all that a plaintiff has to do is establish his case by what is called a preponderance of the evidence, which boils down to mean that it is more likely than not that what the plaintiff has asserted is true and the jury is entitled to give him his verdict. Now, that may be fine, and, indeed, is fine when all that is involved is whether A should pay B some money. But the purpose of the government in bringing a criminal case is to authorize the court to commit the defendants to jail. And our liberties wouldn't be worth much if it were possible to put a man in jail simply because his guilt seemed more probable than his innocence. Therefore, the law says guilt must be established beyond a reasonable doubt.

There are two words in that definition. "reasonable"

getting the file on Mr. Stassi.

MR. NESLAND: I do not have it, your Honor.

MR. GARLAND: That is all we have, your

Honor.

CROSS EXAMI[N]

BY MR. NADI[R]:

Q [A]llgood, I believe you testified, sir, that th[e] Board's decision to have a rescission hearing aft[er] you [h]ave granted a person a parole date might be m[ade] received information of misconduct in the institution?

A [That] is true, sir.

Q [Per]son is under investigation and you receive a report that there is the possibility of his being [charged] for crimes committed in the institutio[n] that be the kind of misconduct that might stimulate the Parole Board to hold a rescission hearing?

A [Y]es, [a]ny that would come from the institution?

Q [Answ]er is yes or no. Is that the kind of informa[tio]n th[at] would cause the Parole Board to have a res[cission] hearing? Yes or no.

A [Possib]le it could. We have never had a case lik[e] th[is].

Q [But] you did receive information that Mr. Otvos might have been indicted, is that correct?

[illegible]

A [illegible]

[illegible]

A [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

A [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

THE COURT: You already established this.

MR. GARLAND: I am trying to find out whether it came any time before that.

Q Had you been furnished any information concerning Mr. Otvos by Roger Underhill?

A I had not been, no.

Q To your knowledge at this time during the year 1970, prior to November of 1974, had Mr. Underhill furnished information concerning Mr. Otvos and Mr. Stassi?

A I have no knowledge whether he did or not.

MR. GARLAND: That is all I have.

MR. NESLAND: Anybody else?

REDIRECT EXAMINATION

BY MR. NESLAND:

Q When you talked with Mr. Otvos about a conspiracy involving him in Atlanta, who did you refer to in your questioning that he was involved with?

A Red Santana.

RECROSS EXAMINATION

BY MR. HADEN:

Q Is there any question that anyone at this trial is Red Santana or ever used that name?

A I don't know if they ever used that name, but I don't believe Red Santana is on trial here.

RECROSS EXAMINATION

BY MR. KADISH:

Q Did you ever contact any government agency, that is, the Bureau of Prisons or the Board of Parole, to find out if the release date given to you by Mr. Otvos was in fact a correct date?

A I did not.

Q Why didn't you do that?

A At the time I heard it from two people, from Fracesca Williams and from Otvos himself, and I also expected to have him indicted in January of 1975.

Q But that didn't happen?

A It did not.

Q As it got closer to the release date --

THE COURT: He obviously didn't. If he hadn't, we wouldn't be here.

Next question.

MR. KADISH: That is all we have.

(Witness excused.)

MR. GARLAND: Can we agree that the document Defendants' Exhibit A came from the Immigration file?

MR. NESLAND: If he so represents.

THE COURT: Do you have any more witnesses?

MR. NESLAND: The government calls Carlo Boccia.

THE COURT: Do you need the Immigration woman?

MR. GARLAND: We do not. If we can substitute this document, she can have the file back.

MR. KADISH: Your Honor, I think we need one other stipulation, and I am sure Mr. Nesland wouldn't object to it. That is, that the Department of Justice has as one of its divisions the Immigration and Naturalization Service.

THE COURT: Whatever the law is, it is.

MR. KADISH: It is important because when Mr. Allgood was asked the question, he said he didn't know.

THE COURT: Neither he nor you nor I have the power to change the structure within the United States. Whatever it is, it is.

MR. KADISH: I just want it in the record that it is in fact a department, a bureau of the Depart-

ment of Justice.

MR. NESLAND: Miss Cameron probably knows.

THE COURT: If you tell me it is and nobody tells me to the contrary, I will accept it.

THE COURT: Do you know this lady?

MR. GARLAND: No, we do not. If we could use the file.

THE COURT: Do you mind if the government has the file?

MRS. CAMERON: If they would give it to Assistant U. S. Attorney Mary Maguire.

THE COURT: Then you are excused.

C A R L O A. B O C C I A, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NESLAND:

Q You are a special agent of the Drug Enforcement Administration?

A That is correct.

Q How long have you been employed in that position?

A The current Drug Enforcement Administration, since July of 1973. Prior to that, with the Bureau

of Narcotics and Dangerous Drugs and prior to that merger, with the Bureau of Customs.

Q For how long would that be in a period of time?

A Approximately eight and a half years.

Q And you are a group supervisor?

A Right now I am a special agent in charge of the Newark office.

Q In 1974 were you a group supervisor?

A Yes, I was.

Q Do you recall in November or December of 1974 participating in an interview with Jean Claude Otvos?

A Yes, sir, I do.

Q Do you recall whether you participated in one or more than one interview?

A I believe it was just one interview.

Q One?

A Just one.

Q Were any other agents present with you?

A Agent Anthony Mangiaracina.

Q Did you conduct the interview or did the other agent or both of you?

A For the most part, both of us did involve

ourselves in the particular interview.

Q Do you recall whether or not that was before or after an interview which Mr. Bradley had or Agent Bradley had with Otvos?

A To the best of my recollection, it was before.

Q Would you please tell the judge what the circumstances were and what was said between you and Otvos to the extent you recall it?

A Basically, the interview was being conducted in order that the possibility be explored as to Mr. Otvos' cooperation with the government at that time. There was just more or less a feeling-type situation during that interview to find out whether he was willing to talk to us or whether he was willing to cooperate. Not much was discussed regarding any particular part of any investigation at all.

Q Did you ask him any questions about Joseph Stassi?

A Yes, sir. I believe during the course of the interview the question was raised as to whether or not Mr. Otvos knew Mr. Stassi.

Q What did he answer?

A He answered in the affirmative stating

that he knew him from being in prison in Atlanta.

Q To your knowledge, had Joe Stassi been brought up at the same time as Otvos?

THE COURT: Brought up from prison?

MR. NESLAND: Correct.

A You mean having been writted up?

Q Had he been writted up at the same time or approximately the same time that Otvos was writted up from Atlanta?

A I think I was involved in signing authorization for a writ to be utilized by the Strike Force. It may have been within the same framework of time. I am not sure.

Q Did you ask Mr. Otvos whether or not he had been involved in narcotics with Joseph Stassi?

A I don't recollect asking that. I do remember asking Mr. Otvos about his prior conviction.

Q And that is referring to his narcotics conviction in the Eastern District, is that correct?

A That is correct, sir.

Q Did you question him about that?

A Yes, sir, I did.

Q Did you question him about people who had been involved with him in that?

A Yes, sir.

Q You knew at that time, did you not, there was an investigation being conducted through your office, and Special Agent Bradley was in charge, with respect to Otvos' participation with Joseph Stassi?

A That is correct, sir.

Q But you did not ask any questions about Joseph Stassi's involvement in that particular investigation?

A No, sir, I don't recall I did.

Q Did you ask any questions with respect to Anthony Stassi that you recall?

A I do not recall. I don't believe so.

Q How about William Sorenson?

A No, sir.

Q Carmine Consalvo or Charles Alaimo?

A No, sir.

Q About the Malizia -- were there any questions about the Malizia brothers, Ernest and Patty Malizia?

A I don't recall.

Q Did you question him with respect to Anthony Verzino or Mario Perna?

A I may have mentioned one of those names or both.

Q Did you ask him if he was involved with them in narcotics or did you ask him if he knew them?

A Only question regarding any individuals that we asked Mr. Otvos about was whether or not he had known them.

Q And Verzino had been in Atlanta with Otvos, is that correct?

A Yes.

Q After you had this interview, or during the interview, do you recall whether or not Otvos said anything with respect to his eligibility for parole?

A I don't recall whether Mr. Otvos said it himself, but there was mention of Mr. Otvos becoming eligible or being released or something to that effect in several months in the future.

Q Did you recall the date?

A No, sir. The number six or eight months is clear in my memory.

Q Did you or any other agent have any contact, to your knowledge, with the Board of Parole or the Immigration and Naturalization Service with respect to Otvos?

A Not to my knowledge.

MR. NESLAND: No further questions.

CROSS EXAMINATION

BY MR. CARLAND:

Q Did you have occasion to interview Joseph Stassi in November, December, 1974?

A Personally, no. I sat in on a portion of the interview.

Q Who conducted that interview?

A I believe that was conducted by the Organized Crime Strike Force in the District of New Jersey.

Q What persons, if you can recall?

A Basically, sir, for the time I was there during the interview, I recall Mr. Stassi's attorney, again Special Agent Anthony Mangiaracina, and there may have been a Strike Force attorney there.

THE COURT: Mr. Stassi's attorney?

Q You recall Mr. Stassi's attorney being there?

A I believe Mr. Stassi had an attorney there.

Q Do you recall that attorney's name?

A I recall a name as one of Mr. Stassi's attorneys, but I don't know whether he was there or not. I am pretty sure that Mr. Stassi had an attorney there.

Q Is there a memorandum of that interview of

Mr. Stassi?

A I could not say for sure, sir.

Q Would that be in the DEA files that you turned over to the Government?

A I should be.

MR. GARLAND: Mr. Nesland, do you know whether there is such a memorandum?

MR. NESLAND: So far as I know, in the files I have looked through, there is none. The only report I have of any interview with Joseph Stassi or Claude Otvos is the one I put into evidence.

Q Whose responsibility would it have been to record the results of that interview?

A It would depend. Primarily the responsibility would probably lie on the Strike Force representative, the Organized Crime Strike Force.

Q The Organized Crime Strike Force representative operated out of the Eastern District?

A No, sir.

Q In that particular instance, where did they operate out of?

A The District of New Jersey, the Federal District of New Jersey.

Q Did they operate out of the District Attorney's

office in the District of New Jersey?

A No, sir.

Q That is just an arm of the Department of Justice, another arm?

A That is right.

Q Is that a separate arm of the Department of Justice from the DEA?

A Yes, sir.

Q When Mr. Stassi was interviewed, was he asked about Mr. Otvos?

A Yes; I believe he was.

Q When would you place the date of the interview of Mr. Stassi?

A That is kind of difficult to recall. I would say a number of weeks after, to the best of my recollection, a number of weeks after the interview of Mr. Otvos.

Q Do you recall their being brought up at or about the same time?

A As I previously testified to, I don't recall. It was about the same time frame, but I don't exactly recall the dates.

Q Do you recall what other people, other than Otvos, that Mr. Stassi was asked about at that interview?

A Which one, sir?

Q The one in November, December of 1974.

A With who?

Q When you were present with the Strike Force representative and with the special agent, Mandracina.

A That is c orrect.

Q Whom else was Mr. Stassi asked about besides Otvos at that time?

A I don't recall, sir. As I testified previously, I was in and out of the meeting. I could not testify to the entire context.

Q What else did you ask Mr. Stassi about Mr. Otvos?

A Again, I don't know if I was the one that posed the question or not, but I think the question regarded whether he knew Mr. Otvos, to the best of my recollection.

Q Any other discussions, any inference made whether he was involved with drugs with him?

A I don't recall if that question was asked.

Q Did you have occasion to fingerprint Mr. Stassi after he was arraigned on this indictment here in this court house in April of '75?

A Myself, sir?

Q Yes.

A No, sir.

MR. CARLAND: Thank you.

BY MR. NADEN:

Q Mr. Boccia, is the Drug Enforcement Administration in Newark located in the same building as the Strike Force office?

A The same building complex; yes.

Q The United States Attorney's office for the New Jersey District: is that similarly located, inthe same building?

A That is correct.

Q Is there regular contact and communication between the Drug Enforcement Administration and the Strike Force with regards to intelligence information in investigations and policy matters?

A Only where it regards narcotics information.

Q Is there a representative of the Strike Force assigned to the Drug Enforcement Administration to work as liaison?

A You have that backwards. It works in reverse.

Q When you say it is backwards, I take it you mean that the Drug Enforcement Administration has a representative at the offices of the Strike Force to work as a liaison?

A Yes.

Q This is a full-time assignment, sir?

A It varies.

Q In November of 1974, would it be fair to say there was this working relationship and liaison between your agency and the Strike Force?

A Yes, sir.

Q Is there the same kind of a relationship between your agency and the local United States Attorney's office, in the sense of your having a representative at the U. S. Attorney's office, or vice versa, again to coordinate?

A That is true today; yes, sir.

Q In November of 1974 was that true?

A No, sir. The situation was reversed.

Q When you say reversed, what do you mean?

A During that time, although I don't remember exactly in that framework, there was a representative of the United States Attorney's office who was assigned to a task force in our office. Actually, the two situations were reversed.

THE COURT: The United States Attorney of this District?

THE WITNESS: No. The District of New Jersey.

MR. NESLAND: I understand this is an interesting area for him to into in terms of figuring out how the Justice Department is set up over in Newark, but I don't see the relevance of it.

THE COURT: It is trying to show that this informa-

tion was available. I will take judicial notice it was available.

Q With regard to Mr. Otvos, was it your impression, based on the information you had, that he was at the center of a large narcotics ring or working with people who were importing large quantities of narcotics in November of 1974?

A There are two questions. Let me answer it this way --

Q Let me rephrase the question, then.

In November of 1974, were you investigating Mr. Otvos for being involved in a narcotics ring?

A Yes, sir.

Q Was your investigation pointed towards narcotics importation activities arising from people in the Atlanta Penitentiary and others?

A It was an aspect of the investigation: yes, sir.

Q When you brought Mr. Otvos up to your office from Atlanta, was that for the purpose of determining whether or not he wished to cooperate with the Government in that investigation?

A I thought I had previously testified that that was the reason for writting him up at that time.

Q And it was during that interview, sir, I take it that he told you he was coming up for parole? I believe you

mentioned that.

A He didn't mention parole, I don't think. He just mentioned the fact he was getting out.

Q Insix to eight months

A That time frame is familiar.

Q Were you in the room when he mentioned that?

A I really could not say for sure.

Q You have a recollection of being told that he said that?

A I really couldn't tell you. Like I said, I am familiar with that time frame. Whether I was informed of that or whether I sat there when he said it, I am not sure.

Q Anyway, it was your best information that, indeed, he was due to get out in six to eight months from November of 1974?

A That is correct.

Q Do you recall, after Mr. Otvos returned to Atlanta after termination of that interview -- do you recall discussing with Special Agent Bradley or any other people in your group the fact that Mr. Otvos was due to get out in six to eight months?

A No; I don't recall specifically discussing that. It probably did come up, but I don't recall specifically.

Q Did you discuss at any time with Special Agent Bradle

the problems that might be developed in your investigation or that might arise if Otvos were to be released and if he left the country?

A I don't recall any such discussion.

Q Do you recall any discussion in which the possibility that Otvos might leave the country were he to be released arose?

A I am sure that that was discussed. I would assume right now that would have been a concern of mine at the time of the interview, but whether it was a concern of mine afterwards or before I don't recall. I don't recall specifically sitting down and discussing that particular subject.

Q In the course of your investigations, would it be fair to say that you discuss your concerns with the agents working on the case?

A Again, it would depend, because there are a number of levels.

Q In common practice on any level, would it be fair to say that you would discuss the concerns that would occur to you with the disappearance of either an important witness or a potential defendant?

A There would come a time that I would discuss it, sure. Whether it would be with the agent or his supervisor, that would be the difference.

Q That is a topic that would occur to you and that you would at some point go over with somebody; is that correct?

MR. NESLAND: I will object if this line of questioning is going to go any further. He is now questioning him about a policy.

THE COURT: I will allow it.

(To the witness:) Do you understand the question?

A The best way I can answer that question, in different investigations, I am more involved than others. I discuss either with the agent or with his supervisor. I may not discuss certain things. His supervisor or senior partner may solve certain problems. In that particular case I would solve, if it were a problem.

THE COURT: Do you remember discussing it in this case?

THE WITNESS: No.

Q Do you recall ever receiving any kind of a communication from the Board of Parole, the Bureau of Prisons, any communication with regard to the possibility of a pending investigation on Mr. Otvos?

A By the Bureau of Parole?

Q The Board of Parole, Bureau of Prisons or any other agency?

A No.

Q Do you recall receiving any inquiry like all-agency checks or other kind of Government internal measures taken to secure information?

A No; I don't.

THE COURT: Did it ever come to your attention in any way, shape or form that the Parole Board was thinking of letting him go?

THE WITNESS: No, sir. I don't recall that. I don't recall any particular notification.

Q Other than the fact that Mr. Otvos said to you that he might be getting out in six to eight months?

A Whether he said it to me or I heard it, I was aware he was either pending release, parole, what-have-you, in six to eight months.

MR. NADER: Nothing further.

MR. NESLAND: No questions.

MR. KADISH: I want to ask one thing:

BY MR. KADISH:

Q The only question I have is this: if this investigation was centered in Newark and in that District Court, how did it get over here ultimately? When was that decision made?

A Sir, at that time I was in a new position, and I really couldn't tell you. It must have been on the level of the attorneys at that point. I couldn't be specific in telling

you why the case is here now.

Q That decision would be made at the U. S. Attorney level?

A It may be. We were involved in an investigatory situation at the time.

Q Who in your chain of command would know that?

THE COURT: What does that have to do with anything?

MR. KADISH: To find out how the case got over here.

THE COURT: The grand jury indicted him.

MR. NESLAND: We will call everybody from the U. S. Attorney's office.

MR. KADISH: The chain of events leads us to question how the case got over from Newark to here.

THE COURT: Apparently it was a decision on Mr. Batchelder's part --

MR. NESLAND: I did it. I called the witnesses.

MR. KADISH: If he knows who his supervisor was who knew that.

THE COURT: You just heard it. It was his decision.

(Witness excused.)

* * *

of days. It was very speedy in the Glazious case.

"Thanking you in advance, I am very sincerely yours, Mr. J. Claude Otvos."

The next is dated February 20, 1975. Officer in charge United States Immigration & Naturalization Service, care of the American Consulate General, Box 12A.P.O. New York, New York.

"Fred P. McCleskey, District Director, Atlanta, Georgia. Jean Nebbia, A14393851. Jean Claude Otvos, A14859660, and Pascal Grandi, A11556854.

"The above-named subjects have all been convicted of narcotics violations in U.S.A. and are all natives and citizens of France and scheduled to be paroled and deported in the near future," -- and there is a paragraph about Jean Nebbia which I won't read.

"Jean Claude Otvos was born in Paris, Francis on May 16, 1939. He last entered the United States at New York on January 29, 1969, as a visitor with the passport issued to Jean Paul Girered.

"On April 6, 1967, he was convicted of attempting to smuggle heroin into the United States and sentenced to 15 years. He is now scheduled for parole and deportation on March 3, 1975. He will arrive in Paris, Charles DeGaulle Airport 8:30 A.M., March 4, 1975, on TWA Flight

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800."

The next paragraph is the next paragraph with respect to Pascal Grandi. The next paragraph,"the French Consultate in New Orleans, Louisiana, has also been apprised of deportaiton arrangements. Forms 217 are not available as subjects speak very little English and there is no FRench interpreter available at the time."

That is all I have.

THE COURT: What is the next witness.

We will take a five-minute recess.

(Recess.)

MR. NESLAND: Mr. Mangiaracina.

A N T H O N Y M A N G I A R A C I N A, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR.NESLAND:

Q You are a special agent with the Drug Enforcement Administration?

A Yes.

Q For how long have you been employed by the DEA or its predecessor agencies?

A Twenty years or better.

Q 1974, were you assigned to the Newark District

office?

A The Newark District office, yes.

Q Did there come a time that you participated in an interview with a man you knew as Jean Claude Otvos?

A Yes.

Q Do you recall approximately when that was?

A The beginning of December, the first week of December.

Q Did you participate in one or more than one?

A I think we had him up here for two days.

Q And you were both --

A Yes.

Q Who was the first one conducted by?

A I think myself and Bradley and Boccia, or Boccia and Bradley, the three of us.

Q And the second one?

A I know I was there. I don't know if it was Bradley or Boccia --

THE COURT: The three of you were there one time or the other and you were there both times?

THE WITNESS: Yes.

Q Would you please tell us what questions were asked and what answers were made by Jean Claude Otvos?

A Well --

Q On the first occasion, if you can recall?

Are you able to separate them in terms of questions and answers?

A Not really, if I can explain a little. I am with the Strike Force on organized crime in Newark, and i had him writted up to sclicit possibly his cooperation with the Government.

Q You are assigned to the Strike Force?

A Yes, out of the Newark District office.

MR. KADISH: I am having difficulty hearing this particular witness.

THE COURT: Do you want to come over here?

MR. KADISH: Okay.

Q Just tell us generally, then I will ask you some specific questions, what you recall of the interview.

A He was asked if he would cooperate with the Government, possibly as a witness in testifying against narcotics violators, suspected narcotics vilators, I should say, and he was asked if he knew Joseph Stassi.

Q Was he asked whether or not he was involved with Joseph Stassi in narcotics?

A I believe he was.

Q Do you believe he was or wasn't?

A I believe he wasn't.

THE COURT: Was he asked?

THE WITNESS: If I could just say what he told us about Joseph Stassi, he met him in the prison yard and that is all he knew about the man or was affiliated with him in any way. He was not.

Q Was he asked, were you engaged in narcotics with Joseph Stassi?

A I don't know if it was put in those words, but I remember to the effect was he involved with Joseph Stassi. In all probability, hemust have been asked for narcotics, which was a negative answer.

Q Was he asked about anybody else, that you recall

A I myself asked him about other convicted narcotic violators.

Q Who were they, do you recall?

A Jean Claude Nebbia, who I worked on. I think there was JackDuritt. That was involved in another case going back to 1965. I believe if I might say, I know I am volunteering,but back in '67 when Otvos was arrested -- I haven't checked this out and if I had -- I might have done the interroatory commission on Otvos when he was arrested by Customs. With Otvos and myself.

Q You knew about his prior case?

A Yes.

Q And you questioned him or talked to him about that?

A About his prior case, yes.

THE COURT: Trying to get his confidence, I assume?

THE WITNESS: Yes.

Q Do you recall whether any questions or answers were solicited from Otvos with respect to Anthony Stassi?

A No,sir. I remember after we had written Otvos up, there was another investigation going on.

Q Was it an investigation independent of yours?

A Yes, which sort of precluded me from asking him any questions that would overlap the other investigation. In other words, if I am questioning you, I can put names and words in your mouth involuntarily like, innocently, which you might carry back to somebody else so in order to avoid this, there is more than just conversations between the two after that.

Q So to your knowledge, no questions or answers were elicited with respect to Anthony Stassi?

A No.

Q How about with respect to William Sorenson?

A No,sir, not that I remember.

Q Do you recall whether or not Charles Alaimo or

Carmine Consalvo were ever mentioned?

A No, they weren't.

Q Do you know whether Anthony Verzino or Mario Per names were mentioned?

A Perna and Verzino were. I believe they were asked of Otvos.

Q Did you ask him ordid other agents ask him or do you recall?

A I don't recall. I can't say for myself.

Q Do you recall whether or not they were asked whether [illegible] knew them or were involved in narcotics with them?

A Whether he knew them.

Q You knew they had been in Atlanta together?

A Yes.

Q Do you recall whether or not there were questior asked with respect to Ernest or Patti Malizia, otherwise kown as the Pontiac Brothers?

A No, sir.

Q Do you recall whether or not they were asked wit respect to Albert Piero otherwise known as Albaduce?

A No,sir.

MR. NESLAND: I have no further questions.

CROSS-EXAMINATION

BY MR. GARLAND:

Q How did it come about that Otvos was being questions?

A Agent Bradley told me he had an investigation going whereby possibly Otvos might be able to help the Government.

Q Who did Agent Bradley say were the suspects in the investigation?

A Mario Perna and VErzini and possibly Stassi.

Q Did he relate toyou what Otvos'involvement might be?

A More or less, yes, sir.

Q What was that?

A That arrangements had been made for somebody or somebody else to go to Europe to make a narcotic connection.

Q Was it stated as to who was to have gone?

A Somebody --

MR. NESLAND: I object to this. It is irrelevant what the investigation was at that time.

THE COURT: I don't see how it will affect these issues before me.

Sustained.

Q Was Anthony Stassi's name mentioned to you by Agent Bradley?

A Not that I remember at this time, no, sir.

Q Did you have any communications with the naturalization and immigrration service about Mr. Otvos?

A No,sir, I don't believe I did.

Q In your capacity,did you ever handle any communications concerning people that were being deported, or might be deported who were prospective defendants?

A No.

Q Any policy guidelines of the Government as to what is to be done in that situation?

A Not that I know of, no.

Q Have you ever been confronted with that situation before where you had someone who was about to be indicted?

A No, sir.

Q Was there a grand jury investigation under way in Newark at that time?

A If Mr. Otvos cooperated, there would have been a grand jury investigation. Since he didn't want to cooperate, there was no sense going before the grand jury.

Q Were you present at any time when Mr.Stassi was interrogated?

A I had Mr Stassi writted up twice, I believe.

Q Did you interrogate him?

A I believe I requested his cooperation for the Government too, which was denied and that was it.

Q Did you discuss with him any involvement he might have with Mr. Otvos when you brought him up on either occasion?

A I may have asked him or Mr. Bradley or Mr. Boccia asked him if he knew Otvos.

Q Did you ask him about anybody else, Perna, Verzino?

A I don't remember.

Q Did you make any memorandum of these events?

A No.

Q No report of it inthe file?

A No.

Q Handwritten notes?

A No, sir.

MR. GARLAND: That is all we have.

THE COURT: Anybody else?

MR. KADISH: No questions.

THE COURT: Any redirect?

MR. NESLAND: No.

THE COURT: Thank you.

(Witness excused.)

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MR. NESLAND: I have exnausted on the witnesses. I won't call any more.

MR. GARLAND: May we have just a moment.

MR. KADISH: Your Honor, we checked with the Bureau of Prisons on that subpoena. The documents were mailed from Atlanta some time mid-last week and either have been lost in the mail or delayed for some unknown reason.

THE COURT: What do you think your documents will show?

MR. KADISH: I think they may show something similar to that which was found in the Immigration-Natrualization Service, a copy of a report from Mr. Bradley about Otvos, perhaps some additional interdepartment memoranda.

Your Honor has seen from the Immigration Service files and the files we have here that there is a great deal of correspondence about the fact there was some suspected conspiracy in the Atlanta penitentiary and that various people did know about it and I think to that extent, the file may well be relevant.

The warden's office, if it has it in the morning it may well come in, but I think it has been in the mail for about six days now.

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THE COURT: It could be here any time next month.

MR. KADISH: I have experienced the problem before except apparently the Immigration material that we mailed last Thursday from Atlanta arrived because I saw it in the file, my subpoena and the transfer of the letter of transmittal had arrived so all I can ask the Court is for the same dispensation that Mr. Garland asked this morning about the records you have asked Mr. Nesland to produce.

We will try to get them here as soon as they arrive.

THE COURT: I will look at them and see if they change the situation in any way.

MR. KADISH: I do not know that the Bureau of Prisons intends to take the position that they are privileged. This has not been communicated to me.

Do you know, Mr. Nesland?

MR. NESLAND: No, I do not know.

THE COURT: Actually if the file produces some blockbuster information, that will change the situation it will strengthen whatever inferences are to be drawn from it and it would seem to me obviously anybody could have stopped this deportation had they thought

about it and nobody did, and that is about what you seem to me to be trying to prove.

MR. KADISH: I don't think Mr.Garland intends to argue this point, but beyond that, Judge, we have also shown especially through the testimony of the last agent, the one question elicited on direct, there was some very specific questions put to Otvos about narcotics involvement with Joe Stassi, to which apparently Otvos took a position of saying there wasn't a conspiracy and that he wasn't involved with Mr.Stassi in anything like that.

THE COURT: It was suggested by the agents that he was guilty of a conspiracy and he said no. That is hardly a man bites dog kind of news. A suspect denies implication.

MR. KADISH: The last testimony was a little bit different because he denied involvement with Mr. Stassi.

THE COURT: He could deny involvement with anybody.

MR. KADISH: Of course, when people are indicted and there are two or three or four co-defendants and who are alleged to have a relationship in a penitentiary and the Government removes the one defendant, the defendants

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could call.

THE COURT: I have gotten writer's cramp from signing subpoenas for you so I don't know that he is the only one you could call.

MR. KADISH: The Government's own indictment alleged that he is a co-defendant.

THE COURT: We have two problems. In the first place, is there any reason for me to believe that anybody in the Government would want to spirit him out and I can't see any suggestion, anything before me that any Government employee or agent had the slightest desire to get rid of this man or any reason to want to get rid of him. Certainly if every time a co-defendant said he wasn't guilty the Government would try to get rid of him, the calendar of this Court would be in pretty fine shape very quickly.

MR. GARLAND: Your Honor, it would appear to me if you have a man who says I am not involved with Stassi, I don't know anything about it and you are investigating Stassi, Joseph Stassi and you are investigating that man, it becomes apparent right there that if that man testifies as he has related, he is a potential defense witness to say no, I never had any agreement with Mr.Stassi, no, I never discussed drugs with him; no, I

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was never present with Verzino --

THE COURT: All defendants that plead not guilty are potential witnesses for deferdants in a conspiracy case.

MR. GARLAND: Particularly a man would have been where my client Joseph Stassi would have been, would have had access to direct knowledge to his no, he never heard Mr.Anthony Stassi's name mentioned in these connections. That man by the U. S. Government is sought out, questioned, they say come on, cooperate. He doesn't. It is known that he is French. It is known that he will face some release and it is known he is a potential defendant at on or about December.

THE COURT: If you are arguing a longshoreman's action, you would be right home free. There is plenty of negligence, especially on behalf of the deceased supervisor, whether he died of shame or what, I don't know.

MR. NESLAND: I will state for the record, your Honor, we did not get rid of him.

MR. GARLAND: You have the free flow then of information between --

THE COURT: The information not only flowed, but got there.

MR. GARLAND: It got all the way over to

Immigration.

THE COURT: Immigration got a memorandum saying this man is a potential indictee and the supervisor, for reasons which we will never know because he had been called to his Maker, said there is nothing he could do about it.

MR. NESLAND: I think the document that the INS had would not show that he was a potential indictee. This simply states that Otvos is the head of a criminal organization with members currently incarcerated in Atlanta Federal Penitentiary and several members presently residing in France, etc.

THE COURT: That is the Immigration document?

MR. NESLAND: Yes.

THE COURT: I am talking about the Board of Parole.

MR. NESLAND: I thought I heard you say Immigration.

THE COURT: I mean to say Board of Parole.

The supervisor or director, the man responsible the day after he orders the man deported gets a document from the Department of Justice and says this man is about to be indicted and he shrugs his shoulders and says there is nothing he can do about it.

MR. GARLAND: At the same time the Parole Board gets that, the Immigration people have this other information in December.

THE COURT: The Parole Board has got a statement from the Department of Justice saying they are about to indict this man. What more the Parole Board needs not to deport him, I don't know. The Parole Board is not on trial here.

MR. GARLAND: Your Honor, I think it is a similar situation if a man picks up a gun and doesn't know whether it is loaded or not and pulls the trigger. Here the officers knew the relationship. They focused in on it. All they had to do is go over to a magistrate, take out warrant and put a hold on him.

THE COURT: There is no question if any of the agents had the slightest idea the Parole Board was going to do this, they would have.

MR. GARLAND: Your Honor, it is the same thing as the man with the bullet in the gun.

THE COURT: I can't fault the agent for any negligence. I don't see any basis for negligence as to them. They had no reason to believe the fellow was going to be deported that I can see.

Why the late director of the Parole Board

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acted as he did, I can't understand, but the Government is not chargeable. So we have a case of Government negligence and if you could persuade me it was highly likely this man was going to be a valuable witness for the defense, then maybe I would have a problem.

I don't see any realistic reason for believing if he were here, he would do anything but hire a lawyer and keep his mouth shut, which is what defendants normally do and if he did anything different, he would just get on and give an exculpatory defense.

MR. GARLAND: Which might well be believed by t jury and acquit our client.

THE COURT: And might not.

MR. GARLAND: It might well be he would take the stand and say no,sir, I never had any discussion.

THE COURT: It is highly speculative. Whether his getting on the stand having finished cross-examination whether you wished he would get on the stand --

MR. GARLAND: I have been in that situation myself, but we can't eliminate, I don't think it becomes a question of speculative nature. Here he has been allowed to become unavailable by conduct of the Government and his relationship is obviously important. If your Honor knew for a fact he was going to be a positive and

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and forceful witness and the Government took him out, there would be no question but here they negligently, the Government, and I think we have to approach the administration of justice to make the Government responsible and it always is that no one speaks for the Government of the United States because it is so large and uncontrollable and these things can always happen unless a Judge says no, where it is negligence, where this situation has occurred, the Government is going to be required to be responsible. It can go on again and again and again.

THE COURT: You have made a good record for arguing that point in the Court of Appeals.

MR. NESLAND: I would say on the case law in this Circuit, that argument is going to fall on deaf ears on the basis of the cases I cited in that memorandum.

THE COURT: I would tend to agree with you.

MR. GARLAND: I don't think that case is close at all. That case involved a sealed indictment some three days before the failure to disclose the existence of the sealed indictment in another District in Florida, and the representation was made by the U.S. Attorney, I think two days later, that he knew of no other indictment. Two days elapse and it involved the failure to disclose the existence of that fact to the defense and they came out

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seven days after that. That is totally different than this case. This is our ability to call a witness. It is different from the negligent failure to possibly disclose Brady material.

MR. NESLAND: The theory of that case, if your Honor has read it and read the opinion, is that the prosecution can't be charged with conduct which it did not participate in or allow to occur. The negligence, your Honor has found, was on the other end of the spectrum. If there was negligence at all, it was on the Board of Parole. Your Honor has found that the agents and the United States Attorney's office did nothing negligent or otherwise wilful or wanton in order to get rid of Mr. Otvos and the point is, the negligence, if any, is even on the other end of the spectrum. It is on the other hand that the Court was talking about in that case.

THE COURT: The case we are all talking about is United States vs. Quinn, 445 Fed. 2d 940, opinion by Judge Moore.

MR. GARLAND: The defense in that case imputed knowledge. Here thought we have activities where you have DEA agents knowledgeable of it, who were working with the U.S. Attorney, talking to him about additional defendants in the case. We have a man being

questioned about it. We have obvious knowledge in the people that will deal with this case,then it puts the responsibility on the DEA agent to take with this potentia occurrence. The gun may go off, the witness may be gone.

THE COURT: If I were convinced that this was a valuable witness for your client, I might have difficulty with it. I think probably under the rules it would still come out with the same result.

I will make the findings as I see them and then perhaps you will succeed in convincing the Court of Appeals but you haven't convinced me.

MR. GARLAND: May I ask your Honor, since we are going forward into the trial to allow the record to remain open to allow us to consider the possibility of a deposition in a foreign country of this man?

THE COURT: You have had a long time to consider that and if you want to take a deposition you will have to have that done bef re the trial.

MR. GARLAND: It is like building a house. Yo have to lay the foundation and I didn't know what we would actually be able to determine on this issue other than the responsive affidavits. If that is the case, it is the only way we can get it. We can't bring him back.

THE COURT: YOu could have had a deposition --

you needed no basis for applying for a deposition.

MR. GARLAND: I understand that.

THE COURT: If you want a deposition and you can get one before the trial is over, I will hear it.

MR. GARLAND: I would like to supplement the record on that issue and I will speak for my defendant --

MR. KADISH: About the prison file, the Judge said if I could get that --

THE COURT: I will look at it when it comes in and after having read them, I will advise you if I have changed my conclusions.

MR. KADISH: There is one key factual distinction in Quinn that can po-sibly aid the Court, although the Court apparently has found Quinn to be apropos, is that Quinn does not go to the question of compulsory process.

THE COURT: Quinn is not applicable on that.

MR. KADISH: The Court has been most fair in allowing us to writ up here 20 some odd witnesses, and I have no problem with the Court's fairness in that regard.

However, if there was one witness to which he was denied compulsory process, he wouldn't have a fair trial. If there was one he ought to be able to get and can't get, he is denied compulsory process under the Constitution and that is what makes this case so completely

different from Quinn and so alone and so much more like U.S. vs. Tsutzwaga.

THE COURT: Is that the Mexican one in the Ninth Circuit?

MR. KADISH: Yes,where the Court dismissed the indictment before the grand jury even indicted the man becau INS deported him and as I recall the facts -- and I don't have them that specifically in mind -- as I recall the facts, there was not a showing in that case that there was any real close relationship going on between the prosecutior and the INS.

THE COURT: I thought there was.

MR. KADISH: There was a showing of some relationsip but I don't think there was an overt showing that the prosecutor knew that in fact those witnesses had been deported.

MR. NESLAND: Under that case, they were in the same posture as the DEA was in this case. They were conducting an investigation of violations of the Immigration laws which would be taken to the prosecutor and we have never contended that DEA, had they spirited Otvos out without our knowledge, but as part of an effort by them to prevent a defense that we couldn't be charged with that wilful conduct, [illegible] absolutely not.

MR. KADI: What I am simply saying is that in this case, in a compulsory process posture and somewhere between Quinn and Tsutawaga, and in that sense, it is a case of novel impression before this Court and perhaps in this Circuit, and to that end, I think that the Court should be persuaded of our position.

That is what I am trying to say.

MR. GARLAND: May it please the Court, I was conferring with the defendant when the issue came up on these other matters.

I would like to place the defendant on the stand, limited solely to this issue, to interviews that occurred.

THE COURT: Let him testify.

MR. GARLAND: Joseph Stassi.

J O S E P H S T A S S I, the defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GARLAND:

Q Mr. Stassi, did you have occasion to be brought to Newark, New Jersey as the result of a writ and investigation going on there about which you heard testimony today?

A Yes.

Q When did you go to Newark?

A It was over the Fourth of July 1974.

Q Were you interrogated?

A Yes, sir.

Q At the time you went up to Newark, did any other prisoners from the Atlanta Penitentiary go with you?

A Yes. Tom Kapatos was brought down maybe a week before me.

Q That was in July?

A In July.

Q Who questioned you?

A I remember seeing the three gentlemen that were on the stand: Brady, Boccia and the last one.

Q Mr. Mangiaracina?

A Yes, and others. There were other agents.

THE COURT: But you saw these three among others?

THE WITNESS: Yes.

Q Was anyone there representing the United States Attorney's office?

A I believe there was.

THE COURT: The Newark office?

THE WITNESS: Yes. I was questioned in Newark.

THE COURT: And you presume they were from Newark?

THE WITNESS: Yes.

Q What were you questioned about? What matters came up in the July interview?

A They started talking about narcotics, what is going onin Atlanta.

Q Do you mean Atlanta Penitentiary?

A Correct. They mentioned different Frenchmen's names to me, if I knew so and so and so and so. Some names I knew; others I didn't. They wanted to know my connection with them. I told them there was no connection outside of kowing the inmates, knowing them as inmates in the prison, and they mentioned Mario Perna's name, Tony Verzino's name. I remember one name they mentioned, Anthony Graziano. I thought they meant Anthony Granza, who was a co-defendant at my conviction.

I said, "You have reference to Anthony Granza?" and they said, "No, we know about Anthony Granza. Anthony Graziano."

I understand Anthony Graziano was one that was arrested with Anthony Perna when Anthony Perna got arrested, and other names were mentioned.

Q Did they mention the name Anthony Stassi?

A Yes, sir.

Q What context did they mention it?

A They were in the detail, did I know what was going on in Atlanta, and I said, "How would I know what is going on?"

They mentioned Anthony Stassi, and I said, "What does Anthony Stassi have to do with it?"

Q Who asked you that?

A One of the agents.

Q Asked you what question?

A About Anthony Stassi.

Q And what did you respond?

A I said, "What does Anthony Stassi got to do with this investigation?" They said, "Everyone in the narcotics division knows about Anthony Stassi." I said, "That is more than I know."

Q What else transpired on the July occurrence?

A That finally I was asked -- I remember the last question, would I help them if I could? I said, "If I wanted to help you, I couldn't help you, because I don't know whatyou are talking about."

THE COURT: To wind it up, you could not help them?

THE WITNESS: That is correct.

Q Were you brought on another occasion?

A Yes.

Q When was that?

A Some time over Thanksgiving week end.

Q Were you brought to Newark again?

A Yes.

Q Were the same three men who testified here today there?

A I remember the last one and others.

Q What were you asked on that occasion?

A Again, they went into what is going on in Atlanta. I believe Mario Perna's name came up again, Anthony Verzino. And in general they asked me what I knew about it, and I told them again I didn't know anything.

Q At that time, was anyone else brought up with you?

A Yes.

Q Who was brought up with you?

A Jean Claude Otvos.

Q Did you have occasion to have a conversation with Mr. Otvos?

A Yes, sir.

Q About what he had been asked?

A We were both brought down from Atlanta together by marshals.

Q In the same car?

A In the same car, and we were in the same floor, the same tank, and we were together all the time.

After he got through, they had questioned him a day or two before they brought me down. When he came back, they explained to me the questions they were asking in reference to me, Anthony Stassi, and they wanted to know what he knew about them or did he have any connection,and he told them he didn't know what they were talking about, that there was no conspiracy as far as he was concerned.

Q Mr. Stassi, if Mr. Otvos was available, would you place him on the stand as a witness?

A I definitely would.

Q Do you desire to have his testimony in your defense?

A I definitely think it would be very important.

Q Why do you want it presented?

A Being on trial before, I have an idea what the Government is going to get into. I think Otvos is very important to me, because what I have been reading on my indictment and my case, he seems to be the central figure in the case, which leaves Mario Perna, Anthony Verzino and some Frenchman,what I understand are going to testify, are going to be in a position to say whatever they want, and Otvos was not here to deny it, or I can't use him as a defense witness to prove whatever they are going to say. They are free to say whatever they want.

Q Is that why you want him, sir?

A Definitely.

Q Were you asked in November, early December about whether or not you were involved with narcotics inside the Atlanta Peni...ntiary?

A That was the general trend of the conversation.

MR. GARLAND: That is all.

THE COURT: When did you learn you were indicted?

THE WITNESS: Some time this past April.

CROSS-EXAMINATION

BY MR. NESLAND:

Q You testified you were up here in July?

A Yes.

Q Of 1974?

A Yes, sir.

Q And that you came up with Thomas Kapatos?

A No. He was taken down about a week before me.

Q Were you up here in West Street with Tom Kapatos?

A Yes.

Q And Tom Kapatos was being taken over there?

A Yes.

Q Do you intend to call Tom Kapatos as a witness?

A I haven't any occasion to, because he doesn't mean anything in this case to me.

Q He is named as a co-conspirator, is he not?

A I don't know in what way where does he come in this case.

Q I am asking you: have you ever talked to Tom Kapatos as to whether he will be a witness for you?

A No; the occasion has not come up.

Q Did you ever talk to him while you were in West Street or back in Atlanta as to what he was questioned about?

A He was questioned with respect to me, and he explained to me he didn't know, didn't have any knowledge of what they were asking him.

Q What did he tell you he was questioned about?

A In reference to me or in reference to what is going on in Atlanta.

Q Meaning narcotics?

A I presume; yes.

Q So you knew that he was being questioned about the same thing you were?

A As of now, I have not read anything about Tom Kapatos in the indictment or anything outside of reading his name as a co-conspirator, but Otvos I was questioned about. I had not been questioned in reference to Tom Kapatos.

Q But you talked with Tom Kapatos as to what he had been questioned about; is that correct?

A All he told me when we were in West Street was that

he was questioned in reference to me and a Frenchman by the name of Nebbia, and Tom told me as far as he was concerned, he told them he had never seen Nebbia and I together.

I was the sole conversation that they asked him about.

Q Were you unable to tell from the conversation with Tom Kapatos that they had questioned him about what you had been questioning him about?

A No; he only told me what they questioned him about.

Q Were you able to ascertain from what he had been questioned about was what the agents questioned you about?

A What I was questioned about was altogether more different than what Tom Kapatos told me. Tom Kapatos in his exact words was questioned with reference to Nebbia and myself, what he knew about Nebbia and Joseph Stassi: so far as he was concerned, he never seen us together.

They said they had information that we had been together, and in Tom's exact words, he said they must have been talking in a broom closet.

Q Since that occasion you have had a number of occasions to talk with your attorney?

A Yes.

Q Are you telling the Court you have never talked about whether or not Tom Kapatos is a potential witness for

you?

MR. GARLAND: Objection.

A Definitely.

Q You never have?

A I never have, because I didn't see the necessity.

MR. GARLAND: We don't waive the objection of the attorney-client privilege. It is off the issue.

MR. NESLAND: You are claiming Otvos was a very important witness o him and Tom Kapatos is a very important witness, and you have not talked to him.

MR. GARLAND: They have not accused Kapatos in the indictment of having conspired. The 19th of September is the first time that name came up. We have focussed on other issues h re.

THE COURT: I don't think it is relevant, in any event.

Q They talked to you about Anthony Verzino?

MR. GARLAND: Your Honor -- if I can advise you, I don't mind him asking anything about Verzino and Perna that relates to these events that I put him up on. I would like it limited to that in accordance with the rules.

MR. NESLAND: I don't see that it can be.

THE COURT: Go ahead.

Q You were asked about Mr. Perna; is that correct?

A Yes. I talked about Perna.

Q In July of '74?

A Yes.

Q And Mr. Perna was in West Street at that time, was he not?

A Yes, sir.

Q Did you have a conversation with Mr. Perna?

A Yes, sir.

Q What did you have that conversation about?

MR. GARLAND: Objection.

THE COURT: Conversation with whom?

MR. NESLAND: Mr. Stassi and Mr. Perna about what he had been questioned about in Newark.

THE COURT: Overruled.

MR. GARLAND: Objection. It is irrelevant, outside the scope of what I put him up on.

THE COURT: I will allow it. This can't be used at the trial.

A Mario was telling me his troubles in general. He was going to kill Tony Vezzino. He was sorry he didn't kill him, and if he ever got the opportunity, he would, how Tony robbed him, how his girl robbed him and so forth and so on.

Q But there weren't any questions or any talk between the two of you as to what had happened in Newark: is that what

you are telling us?

A He mentioned that Joe Candello set him up, how he framed him, who was responsible for it, his good friend Joe Candello was the good friend that set him up.

Q I am asking you again: was there any conversation between you and Perna as to what you had been questioned about in Newark?

THE COURT: Yes or no.

A No. We didn't go into any detail on that.

Q Did you tell him that you had been over to Newark?

A I presume I probably did, yes.

Q You don't recall?

A I would say yes, but I am not definite.

Q Did you tell him what you had been questioned about over there?

A Just about Atlanta. Wait a minute. I take it back. I did mention that they questioned me about him. I remember the name Anthony Graziano, and that is all that was said. We didn't go into details.

Q Did you know you were under investigation? Did you discern from the questions you were asked on those two occasions, July and November, that you were under investigation?

A No, sir. I was not told that I was under investigation.

THE COURT: Did you figure it out for yourself?

THE WITNESS: I was being questioned, but as far as being told, no one told me.

THE COURT: I understand no one told you. Did you figure out for yourself that they were probably after you?

THE WITNESS: I knew something was going on, the fact that there was an interest in me.

Q And you knew, or at least you were able to discern from that that it may have involved narcotics?

A The question I was asked and the fact I was brought down to New York after being away eight and a half years and being brought down, I presumed something was going on.

Q Did you presume in your mind that it involved narcotics?

A I would have to presume that.

MR. GARLAND: I would object to the question as being of such a character that there can't be any intelligent answer.

THE COURT: I cannot see the relevancy.

MR. NESLAND: I am trying to understand what he did once he know he was under investigation, to see whether he talked to Otvos or Kapatos or Perna or anybody else.

THE COURT: How is this relevant?

MR. NESLAND: He now claims Otvos is the one he would want in this courtroom, and he never even made any

attempts with Tom Kapatos.

THE WITNESS: Otvos was released in March. I was indicted in April. That is the first I knew how important Otvos would have been to me. Up until that time, I had no idea how important Otvos would have been to me. It was the first I knew about it in April, when I got the indictment, when I read that I and Otvos were defendants in the indictment.

Q And you have never known --

A Before that, no.

Q Since then, you have not done anything or learned that Tom Kapatos was also named as a co-conspirator.

A I just read the last week the first time, and I might still use him as a witness.

MR. GARLAND: And he is available, we understand, your Honor. He had not been sent to France.

MR. NESLAND: No further questions.

THE COURT: Any questions from any other defendants?

Thank you.

(Witness excused.)

MR. GARLAND: May it please the Court, there is one last comment I wish to make on this matter, and that is, it has been the learned Judges who I have had say to me that the appearance of fairness is often as important as the actual existence of it, and he is to those who are accused of crime,

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who see this occur and to others, the occurrence here can't help but create the appearance of double dealing by the Government of the United States, and I argue that upon your Honor as a policy reason why you should rule in our favor and dismiss this indictment.

I would also move that the Government be required, if they want to proceed with the indictment, if your Honor does not choose to dismiss it now, that they make the efforts that are available to them to cause Mr. Otvos' return, whatever power the Government has to bring witnesses, to return Mr. Otvos here so we can use him as a witness.

MR. MCCLAND: You might read the treaty between the United States and France. It might resolve this problem.

We have no knowledge as to where he is, but even if he were in France, he could not be brought back to the United States, under existing treaties.

MR. GARLAND: Is it the position that the Government of France would not cooperate with the Government of the United States?

MR. MCCLAND: There is between Governments what are called treaties.

THE COURT: You can check the treaty. He also tells you he doesn't know where the man is.

MR. MCCLAND: In any event, that is correct; we

do not know where he is.

THE COURT: I presume you don't know, either?

MR. GARLAND: He is in France, and somewhere outside Paris.

THE COURT: You seem to be one source up on the Government.

It has occurred to me if in fact Mr. Otvos would be a helpful witness, he would also be very likely to cooperate with you in your attempt to get his testimony, either by deposition or otherwise.

MR. GARLAND: He may well.

THE COURT: The Government advises me they don't know where he is, and they are in no position to help you.

MR. GARLAND: I urge for your Honor's strong consideration on the case law that we submitted that there is good policy reason why the law allowed under our constitution a man to be produced as a witness, and we seek relief from this Court.

MR. NADEL: Just for the record, Mr. Sorenson recently made an application to [illegible] in the relief requested by Mr. Garland on Mr. Stassi's behalf. I wish to say that the basis for that, your Honor, is that while no exculpatory statement has been made to law enforcement officials as far as we know in the same manner that it has about Mr. Garland's

client, my client is alleged to have been in the Atlanta Penitentiary and involved in discussions with these individuals as well.

I think the evidentiary effect of Mr. Otvos's statement and testimony, were he to be called into court, would have a spill-over effect before a jury and would be beneficial to Mr. Sorenson.

Furthermore, the fact he is unavailable has made it impossible for me, as Mr. Sorenson's lawyer in these past sixteen days and whoever represented him up until the time that I was assigned -- Mr. Swinger -- to make whatever efforts might have been undertaken to speak with Mr. Otvos and to develop that possibility of exculpatory evidence, and that is Mr. Sorenson's reason for joining the motion, and I just wish to remind the Court at this point that a ruling is requested on his behalf as well.

THE COURT: I imagine Mr. Newman joins in that?

MR. NEWMAN: It is standard operating procedure for every defense counsel to join in every other defendant's motion, but in this case I don't see how I can get into it, in light of my request of indicating there are in effect separate conspiracies, which is the position I will be asserting throughout, so I do not join in this particular application.

THE COURT: I am inclined to deny the application,

but I make the following findings.

I find that the Parole Board in its total conduct was grossly negligent in ignoring the specific communication from the Department of Justice saying that this individual was likely to be indicted. However, I find that the negligence was certainly not -- I don't think the Parole Board thought of itself as protecting the interests of other defendants when they made this inquiry to the Department of Justice for information as to whether there were any organized crime involvements inthis potential parolee.

However, I will assume once negligence was established whoever is injured by it would be able to get the benefit of it.

The purpose, obviously, of making this inquiry to the Department of Justice was for the special interest of the Department of Justice in prosecuting the potential parolee, if they were going to do so. Why the supervisor did not act on the information he got we will never know, and the assumption that hethought there was something he should do about it is wholly untenable.

However, I don't see that any negligence can be imputed either to the United States Attorney's office or to the agencies. In the first place, the United States Attorney's office was aware, I assume, of the general practice of the

Parole Board to make this kind of inquiry of the Department of Justice, and I don't see why they would have any reason to believe that the ordinary processes of the bureaucracy would follow and the man would not be paroled, and the U. S. Attorney's office was under no notice that anyone was contemplating paroling him.

That seems quite clear from all the memoranda that had been admitted.

Otvos himself apparently was surprised to learn that he was getting out earlier, so obviously he didn't tell the agents of this, and the agents' memoranda indicate that they were surprised also.

Be that as it may, I find no basis for imputing negligence to either the agents or the United States Attorney.

On the issue of the value of the testimony, I am not at all persuaded that the testimony would be of value to the defendant if this witness were here. It would probably be much more valuable if they could get it on deposition, because in those circumstances the defendant would be quite free to talk and it would be a very happy result from the defendant's point of view, I would think.

I cannot think of any other points that should be covered.

MR. GARLAND: It has been brought to my attention

that the best information we have on Otvos is that he returned home to France.

THE COURT: We know that. He went on TWA and landed in Paris. Where he went from that point --

MR. GARLAND: I was under the assumption there was a mix-up as to another defendant in the case.

THE COURT: So you are thinking he was outside of Paris?

MR. GARLAND: I had him mixed up with another individual who was named in the case, and upon verification it appears we don't know where he is.

THE COURT: Does either side feel there are any facts I could find that would be helpful to them? I will consider whether I should find them.

MR. GARLAND: That the United States Government had an opportunity, ample opportunity to prevent the deportation from taking place, as your Honor recognized, by swearing out a warrant which would have prevented the deportation.

THE COURT: I think I said during the hearing that had the agent or the U. S. Attorney realized there was a deportation, obviously they would have stopped it.

Does the Government feel there are any facts that you think I should find?

MR. NESLAND: No, your Honor. Certainly if we had

the knowledge he was being deported we should have, could have and would have filed a complaint, issued a warrant and lodged it.

THE COURT: All right.

Ten o'clock tomorrow morning.

I have asked Mr. Nesland to prepare a list of all those names you requested and xerox it so I will show that list to the jury. It is a complete waste of time to repeat names endlessly, and my practice in this kind of a case is to tell the jury if any of them recognize any of those names, come to the side bar and explain to me why they recognize them.

Mr. Nesland will prepare the list with those names and any names he wants on the same list to be shown to the jury.

MR. GARLAND: There is a matter I wish to bring to the attention of the Court --

MR. NESLAND: Just on that issue, your Honor:

Throughout the testimony the Government will establish that many or most of these defendants use aliases. It may be that some juror may know them under an alias but may not know them under their real name.

THE COURT: You better put in all the aliases. Don't say Stassi Alias Joe Doe.

MR. NESLAND: I will put their names, not a/k/a.

THE COURT: Just Stassi, Jones, Rogers. No indication they are the same person.

MR. GARLAND: Do we have time to take up a few additional matters?

First of all, I would like to bring your Honor's attentionto the fact there has been submitted certain wire tapping or consentual eavesdropping takes taken of conversations of Antyony Stassi. Your Honor received it in camera and did not disclose to us the identity of the informant.

I have interviewed one Roger Underhill, who says he on some twenty occasions, numerous occasions, twenty or more are his words, that he wore body mikes on behalf of the DEA, that he maintained a telephone in the name of John Dean, and the bill was sent to the DEA agents under the name of Joe turner in Atlanta. He has revealed this.

I advised Mr. Nesland of this on Saturday. Mr. Nesland has stated that to the best of his knowledge, the only things that exist as far as tapes are concerned are what he submitted to your Honor.

First, I will ask, in light of the fact that if these tapes involve Mr. Underhill, that they be now given to us, there being no need to protect his identity. He has given us a full interview.

Secondly, his statement which I will state he will take the stand on that there are additional tapings that have occurred. We don't know whether he has subpoenaed them up here, but I am sure that the right hand of DEA doesn't know what the left hand is going. I know there are numerous tapings of my client, my client's son, and I want to bring this matter to the Court's attention.

THE COURT: If Mr. Underhill is not produced as a witness, how is it relevant whether those tapings occurred or not?

MR. GARLAND: It is Brady material. I think we are entitled to the statements of the defendant under the criminal rules. I think we would be entitled to know whether there is a withholding, whether it has any Brady material in it.

THE COURT: Do you know anything about any Underhill tapes?

MR. HESLAND: Your Honor, I have asked DEA whether or not they have any tapes other than those they have sent us. Mr. Sear asked the agents whether or not they know of any tapes other than those I have submitted. They do not.

I have also submitted a request to the Justice Department for an all-agency survey with respect to Joseph Stassi, and your Honor is aware of the results of that.

THE COURT: What about Underhill?

MR. NESLAND: I don't want to take a position with respect to Mr. Underhill. The fact he had an interview with h does not necessarily free me to disclose whether that man has ever acted asan informant for the Government.

MR. GARLAND: I will be glad to take the stand on it

MR. NESLAND: I have no problem with his representation. That does not necessarily free the Government to inform whether or not this man has been an informant.

MR. GARLAND: Your Honor, this whole transaction goes outside the indictment and the alleged continuance of the conspiracy, and what my client was doing -- or clients, because he also states he had a conversation with Mr. Joseph Stassi inside the penitentiary when he went in as a manager for a baseball team and conducted a one-hour conversation with Joseph Stassi. But the absence of any conspiratorial narcotics-related statements on those tapes might be relevant to negate the existence of conspiratorial conduct, because here wasa man who allowed the Government to be able to monitor the actions, conduct and statements of my client.

THE COURT: He didn't allow the Government. He didn't know it was the Government, according to your theory.

MR. GARLAND: This person aided the Government. Underhill had conversations with my client.

THE COURT: But your client didn't know it was the

Government.

MR. GARLAND: I don't take that position, but we do take the position that Underhill attempted to engage him in a variety of conversations to provide evidence for the Government and that the absence of those would be a relevant factor to show, "Look how innocent we are by virtue of the fact the Government had their own right hand man trying to talk to him about drugs and being involved in drugs, and there would be something on these tapes about it."

MR. NESLAND: Does he have from his interview a basis for saying that Underhill had told him that he carried body tapes and in effect everything he said to Joseph and Anthony Stassi was not narcotics related?

MR. GARLAND: I don't make that assertion.

MR. NESLAND: Do you have a basis from you interview, I am asking you, to believe that he has exculpatory information rather than incriminating information? That is all I am asking.

MR. GARLAND: He may have some or both, your Honor, and I can say that he does have incriminating information that might well be on those tapes, but I think your Honor should receive them, number one.

THE COURT: My recollection of what you gave to me had no relation to conversations in jail about football.

MR. GARLAND: I switched defendants on you. As I understand, what you received was about Anthony Stassi. Joseph Stassi was the one who was taped inside the penitentiar at the baseball game.

THE COURT: Anthony Stassi's are the only tapes you have given me?

MR. NESLAND: That is correct. Mr. Sear contacted the agents, and they assured him no tape recordings were made of Joseph Stassi.

MR. GARLAND: I think we are entitled to any statements of the defendants. Maybe I am in error. I don't think Iam.

THE COURT: He says he has no statements, no tapes of conversations with Joseph Stassi. If you want to subpoena up Underhill to challenge that representation, you can do that.

Where is Underhill? Is he in jail?

MR. GARLAND: Yes; he was. I just wanted to apprise the Court of it at the earliest opportunity.

THE COURT: Is he one of the persons whom I have signed a subpoena for?

MR. KADISH: No, sir. We just discovered this on Friday.

MR. GARLAND: I interviewed him on Friday. I felt

it might pose serious problems some time later in this case. That is why I brought it up.

THE COURT: In the meantime, you have gotten all the information they have given you about Underhill, and you are satisfied there are no tapes.

MR. NESLAND: Yes.

MR. GARLAND: We would ask your Honor if the tapes you have received of the conversations of Anthony Stassi do relate to Underhill, that your Honor now disclose them to us.

THE COURT: I cannot remember whether they do or not.

MR. GARLAND: We may make a motion.

MR. KADISH: On behalf of Anthony Stassi, I moved for the Court to reconsiderhi s position on withholding those tapes from us on several grounds, none of which were this new ground, which is now that the informer has revealed himself to us. We know who he is. He is in protective custody. He is in a separate facility, the Fulton County Jail, and there is no need to protect the informer any more, and I would like statements of my client as a statement of the defendants, because it is mooted. There is no need to protect him.

MR. GARLAND: Is a possible relevance that we may establish a connection between Underhill's conduct and the conduct of Perna and Verzino? We may be able to make a connection to show how it is that Perna and Verzino came to know

how important and interested Joseph Stassi was to certain DEA agents. It may go to the motive of Perna and Verzino ultimately.

MR. KADISH: I would also request and do it in writing, if the Court desires, I think, on behalf of Anthony Stassi, and I am sure Mr. Garland will state this as to Joseph that any letters dealing with immunity or payment to this man Underhill for information would be relevant as part of the same mechanism of Verzino, Perna, Underhill giving to the Government of informer information. I think under Brady we are entitled to that.

THE COURT: You would be certainly entitled to payments to a man who testified.

MR. KADISH: We would be entitled to it if in fact he told us there were such payments --

THE COURT: Supposing they paid Underhill a thousand dollars a day, and they don't use him as a witness. How is that relevant?

MR. KADISH: If they use him as affirmative evidence, then -- I don't even know what we would say, but if we put the man on the stand as a defense witness and we felt that that documentation would add to our presentation, I think we would beentitled to it.

THE COURT: If you put the man on the stand as a

defense witness, I will deal with the problems that presents.

MR. NEWMAN: Your Honor, I realize the hour is late, but there are two things I want your Honor to consider. That goes to the number of challenges to be exercised by the defendants.

I want your Honor to consider an alternative proposal, that you enlarge the number of challenges in view of what I consider an entirely different position that my client finds himself in from the other three defendants, or, in the alternative, that your Honor consider in the event I cannot agree with my co-counsel, that I at least be given some challenge to exercise independently.

THE COURT: The position that I have always taken with challenges so far is that if you can agree with the Government on expanding the total number of challenges so the Government and the defendants keep the same ratio and if you do that, I will go along with any agreement you come to. I think the ratio should be kept the same. If you would agree among yourselves to split the challenges or any agreement you come to among yourselves, that is perfectly all right with me.

MR. NEWMAN: We will try to do it without involving the Court tomorrow morning. If necessary, I will bring it back to the attention of the Court.

THE COURT: Ten o'clock tomorrow morning, and I

take it we will be prepared to proceed.

For the benefit of you people from Atlanta that have not been exposed to my vagaries, I address most of the questions to the jurors in a group before any of them are picked. After I get through with that, I call counsel to the side bar for any suggestions that they may think ought to be addressed to the jurors as a group. Then I call individual jurors and ask them specific questions, then turn them over for challenges.

MR. GARLAND: After specific questions are asked by your Honor, do we have an opportunity to suggest questions to the Court?

THE COURT: You have already, and as long as you don't abuse the privilege, any time you want to call a side bar corference to suggest anything, you may do so.

MR. GARLAND: If, for instance, someone says, "I work for a certain area of the Government or Police Department" and we feel like we would like your Honor to ask an additional question concerning whether they ever prepare cases or something like that, how would we go about it?

THE COURT: I will probably ask them, myself. If you feel there is any particular thing before you exercise your challenge, as long as you don't abuse the privilege, you can come to the side bar to discuss it. I don't want trips to

the side bar every five minutes.

MR. NADEN: Does this Court ever make available an opportunity for counsel to ask questions directly to prospective jurors?

THE COURT: I have been here three years, and I have not yet.

MR. NESLAND: Will we have an opportunity before your Honor voir dires the jury to focus on a few of the questions that the defense is asking for, requesting your Honor to ask, some of which I oppose and as to some of which I oppose the language.

THE COURT: I won't use their language. I haven't yet.

MR. GARLAND: Does your Honor give a pre-charge to the panel as a whole before voir dire?

THE COURT: I suppose you might call it that. I take up the basic principles of law.

By the way, I am glad you raised that. Do you wish me to bring up the defendants' right not to take the stand?

MR. GARLAND: Yes, sir.

THE COURT: Does anybody object?

MR. GARLAND: We would request your Honor cover the general principles that apply.

THE COURT: I do that.

MR. GARLAND: Yes.

THE COURT: I specifically take up the defendants' right not to take the stand unless specifically requested not to.

MR. GARLAND: Your Honor, we would at this time object to the mention in proof, opening statements or examination of Government witnesses and the fact that Mr. Stassi is serving a sentence for importation of narcotic drugs We think it should be limited, in order to avoid prejudice to the fact t hat he is serving a sentence in a penitentiary.

THE COURT: That is reasonable. I don't think the reason he is in the penitentiary --

MR. NESLAND: While we are on that question, on a number of witnesses I have had to prepare them to limit their testimony so that those kinds of prejudicial things or potentially prejudicial things will not come out, once that I think might present a problem as to a question of law.

For that reason, there may be areas in which I lead a defendant -- rather, lead a witness simply to avoid it, and I am just alerting them that leading questions may be asked in particularly sensitive areas, and I also advise them that I have told the witnesses that if the question calls for relating those kinds of facts, they are obligated to relate those facts but not to volunteer those facts unless

it is elicited by the question.

I have advised all of my witnesses about that.

THE COURT: A witness can't lie just to protect the record. You will recognize that sometimes the Government has to lead.

MR. GARLAND: Your Honor, if we can make an objection to leading in that area rather than proceeding to ask the non-leading question, we would ask the prosecutor to say this is one of those areas, so your Honor could overrule our objection rather than let us stumble into the trap.

THE COURT: If you object to questions that are leading, you can say this is one of the areas you discussed with the Court.

MR. GARLAND: Thank you.

THE COURT: Ten o'clock tomorrow morning.

(Adjourned to October 16, 1975, at 10:00 a.m.)

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MR. NESLAND: The government calls Mario Perna.

M A R I O P E R N A, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NESLAND:

Q Mr. Perna, the acoustics in here are very bad. I would ask you to please keep your voice up, speak slowly so all the members of the jury can hear you.

A I will try.

Q Speak as if you are talking to the last juror here, then everybody will hear you.

A All right.

Q Mr. Perna, how old are you?

A Forty-six years old, sir.

Q Are you married?

A Yes, sir.

Q What are their ages?

A I have a boy of 13, a girl of 14 and a baby boy of 15 months.

Q Are you presently incarcerated?

A Yes, sir.

United States Penitentiary in Atlanta?

A Yes.

Q Approximately when did he arrive in Atlanta?

A I believe it was August or September of 1967.

Q During the time you were in Atlanta with Mr. Verzino did you have a business relationship with him?

A Yes.

Q Tell the court and jury what that business relationship was?

A We entered into the narcotics business in that we would try to contact whatever Frenchmen we could, South Americans, so that in the future we could import some narcotics from these people.

Q While you were in Atlanta did you meet a man named Joseph Stassi?

A Yes, sir.

Q When did you first meet Joseph Stassi?

A I believe it was in 1969.

MR. KADISH: Your Honor, I just can't hear him.

THE COURT: Try to keep your voice up. You have to remember people over there have a blockage. Speak out to the people over there.

Q Who introduced you to Joseph Stassi?

A I don't recall at this time. It may have been a number of people.

Q Is the man that you knew as Joseph Stassi in the courtroom today?

A Yes, sir.

Q Would you please point him out for the court and jury?

A He is sitting there with the glasses.

Q Would you point out which one he is starting from your left and going right?

A The second man at that table.

MR. NESLAND: May the record reflect he has identified Joseph Stassi?

THE COURT: Is that conceded?

MR. GARLAND: Yes.

Q Mr. Perna, did you know Joseph Stassi by names other than Joseph Stassi?

A Yes, sir.

Q What did you refer to Joseph Stassi by name?

A Joe Rogers or the Old Man.

Q Mr. Perna, did you also know a man by the name of William Sorenson while you were incarcerated in Atlanta?

A Yes.

know a man by the name of Joseph Condello?

A Yes.

Q When did you first meet Joseph Condello?

A I believe it was in 1969, sir.

Q Was he serving time there?

A Yes.

Q Do you know what he was serving time there for at that time?

A I believe it was hihacking.

Q Did you also know a man by the name of Thomas Kapatos?

A Yes.

Q When had you first met Thomas Kapatos?

A I believe it was 1958 or 1959.

Q Where did you meet Thomas Kapatos?

A State prison.

Q Did you meet him again in Atlanta?

A Yes, sir.

Q Did you know Thomas Kapatos by any other name?

A Yes.

Q What names did you know Thomas Kapatos by?

A The Greek.

Q While you were in Atlanta did you associate with any particular prisoners?

A Yes, sir.

Q Would you please tell the court and jury what particular prisoners you associated with while you were in Atlanta prison?

A Anthony Verzino, William Sorenson, Joseph Condello, Danny Grillo, Joseph Stassi, several others I can't recall.

Q Where were you housed in Atlanta?

A In what they refer to as an honor dorm.

Q By "dorm" you mean dormitory?

A Yes.

MR. KADISH: May we have a date, please?

Q How long were you lodged in the dormitory, to your knowledge, do you recollect?

A Approximately four years.

Q You were in Atlanta, were you not, from 1967 to 1972?

A Yes, sir.

Q Who was lodged in the dormitory with you? Who were your associates?

A Tommy Kapatos, William Sorenson, Anthony Verzino, Joseph Condello, Danny Grillo, several others.

Q Where was Joseph Stassi lodged?

A D Cell House.

Q How often did you see these particular prisoners that you have testified about previously?

THE COURT: Including or excluding Joseph Stassi?

MR. NESLAND: Including him.

A Every day.

Q To your knowledge, did Mr. Verzino have a close association with any particular prisoners?

A Yes.

MR. GARLAND: Objection. It calls for a conclusion.

THE COURT: I will allow it.

Q Who did he have that kind of association with, to your knowledge?

A Joseph Stassi and Tommy Kapatos.

Q How often would you see them together?

A Every day, sir.

Q What would they do when you saw them together?

A They would usually walk in the recreation yard and talk.

Q While you were in Atlanta did you ever do anything for Bubby Sorenson while he was there?

A Yes.

MR. HABER: Object to the form of the ques-

had this meeting?

A Some time in January, 1970.

Q What was the conversation the three of you had at that time?

A Verzino and myself spoke to Otvos and we asked him if it were possible for him to get us any narcotics into this country. He said it would be no problem for him provided that we had someone here on the outside, meaning outside of the prison, that could handle the narcotics once they arrived here, and we told him that we did have, we had someone here to handle it for us. He said, "Fine, you make arrangements, let me know if the people are willing to accept it; then we will make arrangements for somebody to go visit and speak to my people in France.

Q Did you have someone on the outside who could handle it at that time?

A No, sir.

Q What did you and Tony Verzino do with respect to finding anyone that could do that for you?

A I tried to contact a friend of mine by the name of Tony Bragiole, which I failed.

Q What is the occupation of Tony Bragiole?

A Narcotics trafficker.

Q After you had failed to reach Tony Braqiole what was done?

A Verzino had tried to reach a friend of his named Red Marconi. He failed in his efforts.

Q Did there come a time after that that you did anything else with respect to finding an outside man?

A Yes, sir.

Q What was that?

A Verzino discussed with me the possibility of speaking to Joseph Stassi about it and the fact that Joseph Stassi had a brother on the outside, that he may be able to be convinced to go to France to act as the intermediary in this operation.

Q Did there come a time --

MR. KADISH: I would like to hear that last answer read back.

(Answer read.)

Q Did either you or Tony Verzino have a conversation with Joseph Stassi?

A Yes.

Q Who did?

A Anthony Verzino.

Q Did you then have a conversation with Tony

Verzino?

A Yes.

Q What did he tell you in that conversation and when was it?

A It may have been still in January, 1970 or maybe Feb ruary of '70, in which he told me that he had spoke to Joseph Stassi and that Joseph Stassi said he was interested and that he would speak to his brother as soon as his brother came down on a visit, that he would send for his brother come on a visit.

Q Was there any further conversation at that time?

A There were several conversations at that time.

Q After you had had this conversation with Anthony Verzino did you yourself ever have a conversation with Joseph Stassi during that period?

A Yes, sir.

Q Did you have one or more than one?

A More than one.

Q Do you recall --

MR. GARLAND: I didn't hear the answer. Did he say yes or no, sir.

(Answer read.)

Q You testified you had more than one?

A Yes, sir.

Q Do you recall the substance of these conversations you had with Joseph Stassi?

A Yes, sir, in that we spoke to Joseph Stassi, Verzino and myself about his brother, would his brother be interested in this deal to go to France and set up this narcotic operation.

Q Did he tell you who his brother was at that time or did you know?

A I didn't know him, no, sir.

Q Did he tell you who he was?

A Yes, sir.

Q Who did he tell you he was?

A Tony Stassi.

Q Since that time have you met Tony Stassi?

A Yes.

Q Would you look around the courtroom today and see if you can identify Tony Stassi?

A He is fourth at the table.

MR. NEISLAND: May the record reflect he has identified the defendant Tony Stassi.

Q What were the conversations among the three of you?

A Joseph Stassi then asked us how would his brother be able to meet with these people and how would they accept him? In other words, would he need some sort of an introduction? Is there a certain word he would have to use?

Verzino then volunteered that he would ask Jean Otvos for a letter of introduction so Joseph Stassi could give it to To Stassi on a visit.

Q Did there come a time, Mr. Perna, that a letter of that sort was obtained from Jean Otvos?

A Yes.

Q Who obtained it?

A Anthony Verzino.

Q Did you see it?

A Yes, sir.

Q Would you describe it for the jury?

A It was written in French on onion skin paper.

Q Did Mr. Verzino obtain anything else from Otvos?

A Yes, the address of his brother in France.

Q Do you remember his brother's name?

A Not at this time, no, sir.

Q Did you ever see the address?

A Yes, sir.

Q What was it on?

A It was on onion-skin paper also.

Q Was it on the same paper as the letter or on a different piece of paper?

A A separate piece of paper.

Q Were there any conversations concerning the letter and the address?

A Yes. Verzino said he would bring it out to Joseph Stassi and that Joseph Stassi would then give it to his brother in the visiting room.

Q Did there come a time that you learned that the letter in fact had been delivered to Tony Stassi?

A Yes, sir.

Q How did you learn that, sir.

A Verzino and myself had learned that Joseph Stassi had had a visit. I believe it was sometime the beginning of '70. I don't recall exactly when. And we went out to the recreation yard to talk to him.

Q Who was with you when you had that conversation?

A Anthony Verzino and Joseph Stassi.

Q Will you please tell the court and jury what the conversation was between you, Anthony Verzino and

Joseph Stassi?

A Joseph Stassi told us that his brother agreed to go to France to see these people and that he also said he had given him the address and the letter, and that his brother told him that he would be back within a few weeks or soon after he had been to France to visit him again to let him know the results about his trip to France.

Q Was there any discussion about what you would do while Anthony Verzino went to France?

A Anthony Verzino?

Q I am sorry. Anthony Stassi went to France.

A Yes.

Q Who did you have conversations with?

A Anthony Verzino.

Q What were those conversations and how many of them were there?

A There were several conversations. They pertained to obtaining a customer for the narcotics in the event Anthony Stassi was successful when he made the trip to France so he would have a customer ready here, and we discussed several possibilities of a customer.

We then came up with the name of Ernie Mali-

zia.

Q Who is Ernie Malizia?

A He is known as Ernie Pontiac.

Q What is his business?

A Narcotics.

Q Did anybody know him at that time?

A Yes, sir.

Q Who?

A I did.

Q How did you know him?

A I have known him for several years. I had been in prison with him.

Q Were any other names mentioned during that time period?

A There were a number of names mentioned but none of them were agreeable except Ernie Pontiac.

Q Did you have any conversation as to what you would do with the name of Ernie Malizia?

A Yes. Verzino said he would tell Joe Stassi about him and that Joe Stassi should tell his brother on his return from France, in the event he was successful in France, to go see Ernie Pontiac.

We also had a conversation about Bubby Sorenson.

THE COURT: About what?

THE WITNESS: Bubby Sorenson.

Q That is William Sorenson, is it not?

A Yes, sir. In which we felt it would be necessary for Anthony Stassi to have somebody to work for him on the outside sdo that Anthony Stassi wouldn't have to expose himself in the narcotics business, that William Sorenson would be the intermediary there to deliver the goods once it was delivered into this country into the hands of the Pontiac brothers.

Q After you had these conversations did you ever have a conversation with Joseph Stassi about it?

A Yes, sir.

Q What was that discussion that you recall and when?

A I believe it was some time -- I don't remember exactly when but it may have been in March. I am not sure.

Q What was that conversation, as you recall it?

A Spoke to Joseph Stassi about Bubby Sorenson and the fact that Bubby Sorenson could work with Anthony Stassi if this thing was successful, and how he felt about it. He said that he felt there

shouldn't be any problem, that his brother would probably accept the idea, but that he wanted to speak to Bubby Sorenson himself.

Q Did you have any discussion with Anthony Verzino as to the purpose of Bubby Sorenson, what he would do for you?

MR. NADEN: I object to the leading of this witness. The question almost calls for an answer.

MR. NESLAND: All my questions will call for an answer, your Honor.

THE COURT: Did you have a conversation with him?

THE WITNESS: I had several conversations with Verzino concerning Sorenson. Verzino didn't like the idea of Sorenson at all, to volunteer him for this business, but he again made some attempts to reach this fellow Ped Marconi and again he was unsuccessful and as we had no other alternative, he then told me to go ahead and speak to Sorenson about working for us and working for Tony Stassi when he got out.

Q Did you have any discussions with Bubby Sorenson?

A Yes, sir.

Q How many discussions did you have and when?

A A few, several.

Q And he was living with you in the honor dormitory, is that correct?

A Yes, sir.

Q Would you please tell the court and jury your recollection of the conversations you had with Bubby Sorenson?

A I spoke to Bubby Sorenson and asked him if he would be interested in working with Tony Stassi. I explained who Tony Stassi was and what Tony Stassi was about at that time, that he was probably in France at about that time or on his way to France.

MR. NADEN: I would like the time of this conversation.

Q Approximately when did you have these conversations?

A I believe it was some time in March.

Q Of 1970, is that correct?

A Yes, sir.

Q Continue.

A He said he would be interested but he wanted to know what sort of money he could earn if he took on this position. I told him he would probably earn

somewhere between $500 and $1000 a package for all the packages he delivered.

Q What do you mean by the term "package"?

A Kilo.

Q What is a kilo?

A 32.2 ounces to the kilo.

Q Continue with the conversation.

A He said how many packages would come in and I said, "I have no idea." I said, "Approximately 100 kilos per shipment." He said, "That sounds good. That is the kind of money I am looking to earn. I just hope the deal goes through."

I then tried to explain to him how to cut the heroin and he didn't care to learn the process. I explained to him that possibly any moneys myself and Verzino would earn from this operation we would want to reinvest in narcotics and we would want him to deliver it for us if we came up with various customers, customers on a smaller scale. He agreed at that time to do so.

Q To do what?

A To deliver and handle whatever narcotics we bought with our own money.

Q Had you at that time had any discussions

with anybody about what you would earn?

A Yes, sir.

Q Who had you had discussions with?

A With Anthony Verzino and Joseph Stassi.

Q When were those discussions?

A Some time after his visit with his brother Anthony.

Q What were the discussions and what do you recall of those conversations about what you would earn?

A The original agreement had been that Verzino and I would receive one-third of whatever the profits would be on the narcotics in cash. There later came a time when Verzino came to me and said he had discussed with Joseph Stassi a deal in which, rather than accept cash, we should accept -- we would accept, himself and I would accept one kilo for every 50 of narcotics that came into the country, and Joseph Stassi tried to explain to him that that was foolish, but Verzino insisted upon it and Joe Stassi agreed to it.

Q After you had these conversations with Bubby Sorenson did there come a time that you had a conversation with Joseph Stassi about Mr. Sorenson?

A Yes.

Q When was that, if you recall?

A It was in March.

Q What did you say and what did Joe Stassi say in that conversation?

A The conversation was about making arrangements for Bubby to meet with Tony Stassi once Bubby Stassi was released from prison, and that if in the interim, while waiting for this operation --

MR. KADISH: I object. Did he say something about Tony Stassi beign released from prison?

THE WITNESS: Bubby Sorenson.

MR. BARLAND: He got his name mixed up.

A -- would there be something that Tony Stassi could do for Sorenson during the time they waited for these narcotics to come in. And Joseph Stassi assured me that his brother Tony would find something for Bubby to do during that time to earn some money.

He then said he would want to see Bubby himself, speak to Bubby, and we got to making a prearranged appointment for Bubby to meet with Tony Stassi once he was released.

Q Did such a meeting occur between Joseph Stassi and Bubby Sorenson?

A Yes.

Q Where was it and when?

A Bubby Sorenson and myself walked into the yard and met with Verzino and Joseph Stassi.

Q When was this?

A Some time in March.

Q What happened at that time?

A Bubby and myself walked over to Joseph Stassi and Verzino and we spoke for a while, and Joe Stassi asked Bubby to walk with him and he excused himself with me and Verzino. He then was walking on the oval track, which is an exercise track, with Bubby Sorenson.

Q Just the two of them?

A Yes.

Q Did you have a conversation with anyone after they had walked that oval track?

A Yes.

Q With whom?

A Bubby Sorenson.

Q Please tell the court and jury what you said and what Bubby Sorenson said in that conversation?

A I asked Bubby what happened. He said he spoke to Joe. Joe had told him that he made an arrangement for Bubby to meet with his brother some time after his release from prison, that the brother would

be abel to do something for him so Bubby would be able to earn some money. It was the same things that I had discussed with Joe myself and Verzino did. I never asked him what the prearrangements were with respect to the meeting. I didn't know whether there was a phone to be used or a date set or what.

Q When did Bubby Sorenson leave jail, leave the prison?

A I believe it was some time late March or early April.

THE COURT: What year?

THE WITNESS: 1970.

Q How often did you have conversations with Sorenson, would you say, before he left the prison?

A I spoke with Sorenson every day.

Q Did you ever talk to him on a daily basis with respect to what he would be doing?

A I don't understand the question.

Q I am just asking you, how many conversations do you recall you would have had with Bubby Sorenson before he left the prison with respect to what he would be doing.

A Several conversations.

Q Did there come a time, Mr. Perna, that you

learned that Anthony Stassi had gone to France?

A Yes, sir.

Q How did you learn that and when?

A I don't remember exactly when it was. It was some time early 1970; maybe April or June, May or June. I don't recall exactly, but Verzino and I had learned that Tony Stassi -- Joe Stassi had received a visit. He had told us he had been expecting his brother to come, and we assumed that is what it was, that he had received this visit from his brother.

We went out to the recreation yard and Verzino and I spoke with Joseph Stassi and asked him whether it was his brother that came out to visit and he said yes. "How did he make out?"

He said he had been to France and everything worked out fine. He had one little problem but he ironed it out himself.

Q What had been that problem?

A He said that he met with Otvos' brother, given him the letter, that Otvos' brother then took him to these other people, the uncle, or whoever it was he referred to, and that he spoke to them. They were reluctant to do business with him and they told him so. He then mentioned the name to these people,

a name Paul Mondolone, and stated that Paul Mondolone had been a partner of Joseph Stassi at one time. They said, "All right, we will go out and speak to somebody and if you can stay here for a day or two more, we will come back and give you a more definite answer."

We learned, a day or so later while he had been in France, these people came back, spoke to him and told him the deal was on, that he could get whatever he needed in narcotics delivered to New York.

Q Was there any further conversation that you recall then between you, Joseph Stassi and Anthony Verzino?

A Yes. We had asked Joseph Stassi if he had mentioned the Pontiac brothers to his brother Tony Stassi, and he said he had and that Tony Stassi had told him he would make it his business to go and see the Pontiac brothers.

Q Was there any conversation as to what would next happen after Anthony Stassi's trip to France?

A Yes.

Q Who had conversations and how often and when?

A Joseph Stassi received several visits during this time. I don't remember how many or just when --

Q From whom?

A From his brother Tony.

Q Did you meet with him after those visits?

A Not every time.

Q Did you meet with him a few times after those visits?

A I did, and mostly Verzino did.

Q Did you have conversations with Verzino or Stassi as to what was being said at that time?

A Yes.

Q Would you please tell the court and jury what the substance of those conversations was that you had with Joseph Stassi and Anthony Verzino?

A The conversations were that we asked Joseph Stassi had his brother met and spoken with the Pontiac brothers, and he said yes, that Tony Stassi had spoken to them and that the Pontiac brothers were interested in the deal, that if the narcotics should come in, that Tony Stassi should contact them.

There were also conversations in which Tony Stassi had told his brother Joe Stassi that he had heard from the people in France and he was waiting to hear again that there should be a shipment some time soon, some time in September of that year.

Q Did you ever have any conversations as to how Tony Stassi heard from the French people?

A Yes, sir.

Q Who did you have those conversations with, that you recall?

A I don't recall if it was with Joseph Stassi or Anthony Verzino.

Q Please tell the court and jury what you recall of those conversations?

A Yes, sir. Verzino or Joseph Stassi explained to me or to both me and Anthony Verzino that Tony Stassi had told him, Joe Stassi, that he had left off with the Frenchman, that the way to get in touch, the way for the Frenchman to get in touch, with Anthony Stassi would be by way of a letter drop that he had in New York City, that they could contact him there, that he had a clerk I believe in a hotel that handled the mail there, and they could get in touch with him and use the name of Dodo, I believe was the name used.

Q You testified during the course of these months your part or your share changed from money to narcotics?

A Yes.

Q Did you have any conversations with Anthony

Verzino as to what you would do with the narcotics?

A Yes, sir.

Q Would you please tell the court and jury how many such conversations you had and what you recall they were?

A We had several conversations over the course of a few months. I asked Verzino, if we were to get drugs rather than cash for our end of the business, our share of the profits, what were we going to do with these drugs. He said, "Well, I have a girlfriend outside by the name of Suzie," whom I had known before from other conversations. He said he would have Bubby Soranson deliver the goods, the narcotics, to Suzie, that she in turn -- that he would teach her to dilute these narcotics and to distribute them to whatever customers he would be able to get in touch with.

Q Was anybody to help her at that time?

A Yes, sir.

Q Who?

A Bubby Soranson.

Q What was to be done with the money that was made from the narcotics that Bubby and Suzie sold?

A The money from that was supposed to be shared between myself, Verzino and Suzie -- we were to use this

money as we saw fit to use it, as far as expenses, and whatever other moneys, we were to reinvest it in the narcotics again.

Q What was Suzie 's name at that time?

A Suzan O'Neill.

Q Is that the present wife of Anthony Verzino?

A Yes.

Q Did there come a time that you learned problems had arisen with meetings with the Frenchman?

A Yes.

Q When was it that you first recall learning of this?

A I don't recall exactly. It may have been some time in August of 1970.

Q Who did you learn these problems from?

A Joseph Stassi.

Q Would you please tell the court and jury what conversations you recall with Joseph Stassi about problems in France?

A I remember one conversation in which Joseph Stassi had said that his brother had been down on a visit and told him that the brother had missed a meeting with the Franchman somewhere in the 50s and Lexington Avenue and that he would probably have to wait to hear

from them again in regard to the shipment that they were expecting in September.

There was a later visit from Anthony Stassi, I believe it was in September, in which he related to Joseph Stassi and Joseph Stassi in turn told myself and Verzino that Tony Stassi had received a letter at this letter drop and that he had received the letter a number of days late after it had arrived there, and due to that fact the date for the meeting that was set in the letter was passed.

Q Would you tell the court and jury if there was any conversation as to how these dates and meets were arranged?

A As far as I know, any arrangements for appointments would be prearranged and it would be stipulated if the person were to miss the person on the first date of the arrangement, that the following day the person should be there at the same time, the same place.

MR. NEWMAN: Your Honor, would I be out of line if I requested an afternoon recess at this point?

MR. NESLAND: If I may just finish these conversations, your Honor.

MR. NADEN: I have an objection with regard to the last answer the witness made. He didn't testify as to any source of knowledge or whether he is making an assumption. I would appreciate some connection.

THE COURT: You said as far as you know.

Q Where did you learn that this was how the appointments were arranged?

A From Joseph Stassi. He told me these were the arrangements his brother had made. It was also the same understanding that Bubby Sorenson had had when he made the arrangements with Bubby Sorenson.

MR. NESLAND: That is it, your Honor. I just wanted to finish that answer.

THE COURT: We will take a 10-minute recess.

(Recess.)

si
16-75
pm

(In open court, in the absence of the jury:)

MR. SEAR: Let the record reflect that this afternoon Mr. Newman returned the Xeroxed 3500 exhibits, 3501-A through 3501-W to me.

(Jury in box:)

BY MR. NESLAND: (Continuing)

Q When we recessed, you just testified about the meetings missed by Tony Stassi in New York.

A Yes.

Q Those were approximately when?

A In August of 1970.

Q Did there come a time that you learned that a load of narcotics had come in?

A Yes, sir.

Q When did you first learn that?

A Some time in October.

Q From whom did you learn that?

A Joseph Stassi.

Q Would you please tell us what you said and what Joe Stassi said at the time that you learned of the load.

A At that time there was myself, Verzino and Joseph Stassi, and Joseph Stassi said that he received a visit from his brother, that his brother had told him that part of the load had come in. I forget the amount. I believe it was

seventy or eighty --

DEFENDANT JOSEPH STASSI: You're a liar.

MR. NESLAND: I object to that and ask it be stricken, your Honor.

THE COURT: Don't make any comment.

Q Would you go back and begin again the conversation you had with Joseph Stassi.

A Yes. Myself, Verzino had a conversation with Joeseph Stassi. He told us at that time that his brother had visited him and that he received half of the load that they expected and that the other half should be coming in within a few days and that he would return to visit his brother again some time after he received the second half of the load. He told him at that time that they had had one problem with the load, that when the Pontiac brothers sent their workingman to pick up the goods from Tony Stassi, that the man they had sent down could not drive a car and that Tony Stassi had to drive the car himself into East Harlem to deliver the goods himself.

Q Where did he deliver them? Where did Joe Stassi tell you Tony Stassi had delivered the goods?

A I believe he said in the vicinity of 117th Street and Pleasant Avenue.

Q Did he tell you where?

A In East Harlem.

RKP 3 Perna - direct

Q Did Joseph Stassi tell you what had happened at that time?

A Yes, that there was a fellow by the name of Al that was a spokesman for the Pontiac brothers and that this fellow Al handled all the money and that he ordered someone else to take the car that Tony Stassi delivered to Harlem and to tak the car somewhere else and unload the car, and he in turn gave the money for the narcotics to Tony Stassi.

Q Who had given the money to Tony Stassi?

A Somebody by the name of Al.

Q In those conversations you had with Joseph Stassi, did you know who Al was?

A Not at that time, no.

Q Was there any conversation about what was to happen next?

A Yes. Tony Stassi had told Joseph Stassi in a few days there would be the balance of the load coming in and that some time after that, after the balance came in, he would be back down to speak to Joseph Stassi again.

Q After you had spoken with Joseph Stassi, did there come a time that you learned that in fact you had received narcotics from somebody else other than Joseph Stassi?

A Yes, sir.

Q Who?

A I spoke with Anthony Verzino.

Q What did Anthony Verzino tell you?

A He told me that Susy had been down to visit him and that Susy had told him that Bubby Sorenson had delivered kilos of heroin to her.

Q Did he tell you anything else?

A That the balance of the load had come in, that they had received a full load and that the Frenchman had been paid in full and was well satisfied and there were no other problems.

He also told me that Bubby had told Susy that he could not handle the narcotics for her any more, that, first of all, he wanted to be paid for the two packages that he delivered to Susy. Susy refused to pay for the two packages, and he then told her he would not be able to handle any other narcotics for her any more after that, that Tony Strassi had ordered him and told him he would be jeopardizing the entire operation by handling small amounts this way and working with Susy.

Q Was there any further conversation as to what happened between Bubby Sorenson and Susy?

A Susy claimed that Bubby Sorenson owed her $2,500 at that time, that Bubby Sorenson denied owing her the money and --

MR. KADISH: What time?

Q Approximately when was this that you were having these conversations?

A I believe it was the latter part of October.

Q of 1970?

A Yes, sir.

Q Continue.

A Susy had made Tony Verzino to understand that Bubby did owe her the $2,500, that she had loaned him the money before any narcotics had come in, and Tony then told her he would speak to Joe Stassi about it, so Joe Stassi could then speak to his brother Tony Stassi about it.

Q After you talked with Anthony Verzino as to what he had learned from Susy, did you have a conversation with anybody else as to the balance of that load?

A Yes.

Q Who?

A I learned from Verzino that he had spoken to Joseph Stassi, and Joe Stassi had told him that his brother Tony had been there and that Tony Stassi told Joe that he received the balance of the narcotics.

At that time, Joseph Stassi told his brother Tony that Tony should go see Susy and straighten out this business about the $2,500 between Bubby Sorenson and Susy.

RKP 6 Perna - direct

Q Were there any conversations as to how much the entire load -- what quantity of narcotics had come in in the two-part load?

A I believe the total amount was approximately 130 or 140 kilos.

Q Was there any conversation with anyone that you had about how the second half of the load had come in?

A I don't understand the question.

Q Was there any conversation about the second part of the load, with anybody?

A Not that I recall, sir.

Q Was there any conversation about any further loads?

A Yes, sir.

Q What was that conversation and whom was it with?

A Tony Stassi had told Joe Stassi at that visit that he expected another load some time either the latter part of November or some time in December.

THE COURT: Where did you learn that from?

THE WITNESS: I learned that from Anthony Verzino.

Q Anthony Verzino had told you he talked with Joseph Stassi?

A Yes, sir.

Q How often did you have these kinds of conversations where Anthony Verzino would relate to you what Joseph Stassi

had said?

A Quite often.

Q Did there come a time during that period that you learned who Al was?

A Some time later on, yes. I learned that Al was a fellow I had known some twenty-some-odd years ago by the name of Albaduce.

Q How did you learn that?

A There was curiosity as to who this Al was, and there were questions, and one day Verzino told me after a visit by Tony Stassi, Tony Stassi told Joe Stassi that the fellow Al's name was Albaduce.

Q Do you know Albaduce's real name?

A No; I do not.

Q You had [illegible]n him how long ago?

A Some twenty, twenty-five years ago.

Q Did you know what his occupation was then?

A Narcotics trafficker.

Q You testified that Tony Verzino had told you he spoke with Joe Stassi about straightening out the problems with Susy Verzino.

A Yes.

Q Did you learn whether there came a time when that was done?

A Yes.

Q When and from whom?

A I learned it from Anthony Verzino, I believe, or Joe Stassi. I don't recall.

Q Would you please tell us what you recall about those conversations.

MR. KADISH: I didn't hear the last part.

THE COURT: Anthony Verzino or Joe Stassi. He doesn't recall.

Q Would you please tell us what you learned from either Verzino or Stassi?

A That Tony Stassi on a visit told Joseph Stassi that he himself had taken Bubby to Susy's home to confront each other and to settle the matter about the $2,500. He told his brother that he himself laid the $2,500 out of his own pocket and paid Susy and made a point of telling him in front of Susy that Bubby then owed him $2,500.

He also told Susy at that time that Bubby -- she would not be seeing Bubby any more in relation to narcotics, that he didn't want Bubby delivering any more narcotics to her, that they had been having too much trouble between themselves, too many arguments, and he didn't want this, and he didn't want Bubby to get involved in any small trafficking. He said that he himself would see that she received whatever

goods she had to get as our -- out of our end of the profits.

After you had these conversations, did you and Tony Verzino discuss what you were going to do now that Bubby was not going to help Susy Verzino?

A Yes. We spoke about Bubby. We discussed the fact about getting somebody to replace him, and we spoke to Joseph Stassi about it, and Joseph Stassi said he would then speak to his brother about it.

We also learned at that time there were stories that Bubby had been doing a lot of gambling and spending a lot of money and doing a lot of traveling and that we weren't satisfied with that, either because he was drawing attention to himself and thereby jeopardizing everybody else --

Q After --

MR. KADISH: Can I have the relator of that last item?

THE COURT: Who told you that?

THE WITNESS: Verzino and I had been having conversations, and we both had a conversation with Joe Satssi, and Joe Stassi said he would tell his brother about it.

MR. KADISH: Your Honor, I am trying to find out who told him about the fact that Bubby was Gambling. That is what I meant. He didn't specify.

THE WITNESS: Verzino had told me that Susy had

you?

A Verzino then told her if she could get the front money from Billy Bats, advance money, that she could buy the goods at cost from Tony Stassi that Billy Bats would want, and whatever profit she would get from that sale to Billy Bats, she could keep it for herself, whatever the profits might be.

Q Did you and Anthony Verzino discuss how much it was that Billy Bats was going to purchase?

A He mentioned that Billy Bats would probably want about five kilos.

Q You testified that you learned that a second load came in. When did you learn that and from whom?

A I believe it was late in December that I learned about it.

Q From whom did you learn it?

A I learned it from Anthony Verzino and Joseph Stassi.

Q Did you have one conversation or more than one conversation about the second load?

A There were several conversations.

Q Do you recall what those conversations were among you, Anthony Verzino and Joseph Stassi at that time?

A As far as the conversation with Joseph Stassi, all I do remember as far as that conversation is that his brother

had been there to visit him, that the load had come in, that it came in the same way the first one did, in two parts, and that they received the whole load and that there had been approximately 120 or 130 kilos delivered, that we were to receive two kilos for our profit, for our end, and that he in turn was making us a gift of one kilo, which made a total of three kilos on that shipment.

Q And that was the conversation you had with Joseph Stassi?

A Yes.

Q What conversation did you have with Tony Verzino about the second load?

A He told me that he had a further conversation with Joe Stassi and that Joe Stassi told him that Susy had received the other five kilos. She gave Tony Stassi the money for the other five kilos from Billy Bats and all together he had got eight kilos at that time.

Q Did Tony Verzino tell you he had purchased any in addition to what you had beengiven as your share?

A No, sir.

Q Was there any conversation then about another load?

A Yes, sir.

Q Whom did you have these conversations with and when?

A I believe it was with Anthony Verzino.

RKP 14 Perna - direct

Q What were the conversations you had with Anthony Verzino?

A He told me that he had been talking to Joseph Stassi and that Joseph Stassi said that his brother told him there probably would be another load some time in January of 1971.

Q Did he tell you anything about Billy Bats?

A He told me when he received a later visit from Susy that Susy had told him that she received the five kilos and she had delivered the five kilos to Billy Bats and that Billy Bats was satisfied and that he would probably want more the next time around and that it was only fair for Susy to keep whatever profits she had received from the sale to Billy Bats.

Q Did the second load come in January 1971?

A The third load.

Q I am sorry.

A No, sir.

Q Were there conversations when it did not arrive?

A Yes.

Q Whom were the conversations with?

A With Joseph Stassi, with Jean Claude Otvos, with Verzino.

Q How many conversations did you have with Jean Claude

RKP 15 Perna - direct

Otvos?

A I had spoke to Jean Claude Otvos myself once or twice. I don't recall exactly.

Q Do you recall what those conversations were?

A Yes. The load had been late at that time, and I asked him what were the possibilities, what could have happened. He said he wasn't sure, but that there was nothing to worry about, that it would come through at some later date if not at that time.

I asked him how everything was going along for him, was he receiving his share, and he said there was no problem, that his brother was looking out for his end and that he was receiving his money.

Q Did you ever have a conversation with him about where he was to earn his share?

A Only in that -- well, we asked him if he wanted any part of our share of the profits, and he said it wasn't necessary, that his people were taking good care of his money for him.

Q You testified that you had conversations with people other than Jean Otvos. Whom else did you have conversations with after the January load did not come in?

A With Joseph Stassi and Anthony Verzino.

Q How many conversations did you have with Joseph

Stassi?

A I don't recall at this time.

Q Do you recall the substance of those conversations?

A Yes.

Q What were they?

A Several times I received visits. I would ask him if there was anything new insofar as the load, whether or not there was any news about it, and at that time he would always tell me no, there was nothing new, that the brother was still waiting to hear something from the Frenchman.

Q What conversations did you have with Verzino?

A About the same thing. The same conversations I had with Joe Stassi and with Verzino.

Q Did there come a time that you had a conversation about a boat with anyone?

A Yes.

Q When was this, if you recall?

A I believe it was some time in March of 1971.

Q Whom did you have that conversation with?

A Jean Otvos.

Q Did you have one or more than one conversation?

A I had had several conversations with Otvos. I don't recall if there was more than one conversation pertaining to the boat.

* * *

lars." I said, "No; I didn't." He said, "What did you send for?" I said, "Two thousand dollars."

He said, "What do you want his money for? You have your own money. You don't need money from him." I said, "I am only testing him from all the stories I heard about him. I want to know if he is still my friend or not my friend," and he said, "That is all you sent for, was two thousand?" and I said, "That is all," and he said, "Bubby Sorenson complained to Tony Stassi that you have been bothering him and harassing him for money and that you asked for ten thousand dollars, that you sent your sister to him," and he asked Tony to tell Joe Stassi to tell him not to ride him no more or send anybody to him any more, that he doesn't want to hear from me any more.

I told Tony Verzino that that was not true, that I had not been harassing him, that this was the first time I had written him in quite a long time since his release. I had written him maybe twice after his release, and this was better than a year.

Q Had you received any response to your first two letters?

A No, sir. I told Tony that this was only a test. I wanted to know if Bubby was still a friend or these stories I had been hearing about him were true or not.

RKP 24 Perna - direct

He then told me that Joe Stassi, the old man, wants to talk to me, because his brother had been talking to him about "your harassing Bubby", and I said, "Fine. I will go out and talk with him."

Some time later that day, Verzino and I went out on the recreation yard, and I met with Joe Stassi, and he asked me whether I had been bothering Bubby Sorenson, and I explained the story to him about my sister and the two thousand dollars and that she had only received one thousand, and he said, "Do me a favor. Don't ride him no more. Don't send anybody to him." And I said I had no intention of getting in touch with him any more.

Q Did there come a time that you had discussions with anybody about problems you were having with Verzino?

A Yes, sir.

Q Whom did you have these conversations with?

A I had initial conversations with Jean Otvos.

Q When did you have these conversations with Jean Otvos?

A It was some time in 1972, at which time I met with Otvos in the recreation yard, and he told me that some people had come back to him, some Frenchmen and some South Americans had come back to Jean Otvos and told him that Anthony Verzino had been asking them for their addresses and

telling them that he wanted to do business with them in narcotics in the future and that he could be trusted and that if they didn't believe him, they could ask Jean Otvos, that he had been doing business with Jean Otvos.

Otvos told me he was annoyed with the fact that Verzino was telling all these people his business, and he said he had spoke to Verzino himself and that Verzino denied he had spoken to any of these people.

Then he asked me to talk to Verzino about these things in which I did and in which I myself was unsuccessful.

Q Did you have conversations with Verzino?

A Yes.

Q What did he tell you?

A He didn't deny that he had been speaking to these people, these Frenchmen and Europeans and South Americans, but he did deny he had told them anything about our business or that he mentioned Otvos' name.

Q Did you have any conversations with Joe Stassi about that?

A Yes.

Q Did you have conversations with Joe Stassi about problems other than Verzino?

A Yes, sir.

Q What were these problems?

A Joe Stassi and I, some time prior to my going home, we had conversatons about problems with Bubby, problems with Susy and problems with Anthony Verzino.

Q First, tell us what your discussions were with Joe Stassi with respect to problems with Anthony Verzino.

A In that Jean Claude Otvos had gone to Joe Stassi and related to Joe Stassi the same things that he had told me, that Verzino had been all over the institutions speaking to people and talking about our business.

He also said that some people had come back to him and spoke to him about Verzino, that Verzino had mentioned his name to them, and he had conversations with Verzino, and Verzino denied these things.

He then told me, "We have problems with Susy. Susy is doing a whole lot of talking. She is talking to the people outside about our business; she is talking about Bubby, about Bubby spending money and at what time she had made a remark about a baptismal party where I believe she said that Bubby at that time was in Florida and that he was spending a lot of money and speaking to a lot of people in the narcotics business to make deals for himself in narcotics, offering them narcotics, and on the strength of the expectation of another load coming in, that he would borrow money on the strength of this expected load from these other narcotics

Q What were the conversations you had about Bubby with Joseph Stassi?

A In that Bubby had been doing a lot of advertising by spending a lot of money, gambling and doing extensive traveling to Las Vegas and Puerto Rico and that he had been back and forth to New York numerous times, to Florida, that he had bought a home for his mother-in-law in Florida, that he was keeping different apartments and that something would have to be done about Bubby also.

Q Was there any discussion during that time with Joseph Stassi as to what could be done about the problems with Susy Verzino, Anthony Verzino and Bubby Sorenson?

A Yes.

Q Would you please tell the Court and jury what conversations you had with Joseph Stassi as to what to do about these problems?

A Joseph Stassi said that it was imperative that we would have to kill Susy.

DEFENDANT JOSEPH STASSI: You're a god-damned liar.

MR. NESLAND: I move to strike that.

THE COURT: Listen: You are not on the witness stand.

DEFENDANT JOSEPH STASSI: I know, but I am not made of steel, listening to this lying bastard. He would hang

his own mother.

MR. NESTLAND: Your Honor, I would request he be excluded.

THE COURT: Keep quiet.

Q Go on.

A Joseph Stassi said it would be important that Susy be killed, that Verzino be killed and that Bubby Sorenson be killed, because we were all in jeopardy at that time, and we would be facing a lot of time in jail. "We would be indicted again if we weren't able to keep them from talking."

Q Was there any conversation as to what you were to do?

A Yes.

Q Was there any conversation with respect to Susy Verzino?

A Yes, sir.

Q What were you to do with respect to Susy Verzino?

A Kill her.

Q Was there any conversation as to what you were to do with respect to Bubby Sorenson?

A Yes.

Q What was that conversation?

A Kill him.

Q Was there any conversation as to what you would do with respect to Tony Verzino?

A Joseph Stassi would handle Anthony Verzino himself in Atlanta, kill him himself.

Q Were you to do anything to help him in that?

A Joseph Stassi asked me to send him some poison, if I could get my hands on it after I had been released from prison.

Q Continue with the conversation you had about that.

A I told him I had been away a lot of years and didn't know whether I would be able to reach anybody or know anybody at this time to obtain the poison and send it to him. I said that I would try.

Q Q Was there any discussion between you and Joseph Stassi as to whether or not you would need any help?

A Yes, sir.

Q What was that conversation with Joseph Stassi?

A He said he had been talking to his brother on visits about these things and that he would explain to his brother that any help I would need --

MR. KADISH: Your Honor, I cannot hear a word he just said.

Q Speak up, if you can.

A He said he had been speaking to his brother on several visits about these same things and that he would tell his brother that whatever help I might need out there

with regard to Susy and Bubby Sorenson, that the brother should help me in whatever help I needed in killing him.

Q Was that the end of those conversations?

A No, sir. There was a little more. We decided at that time that it would be best if anybody had to be killed, that Verzino would have to be killed first, because if he had learned that Susy were killed first, that he would be afraid and panic and run to the authorities, and we decided then it would be best to kill Verzino first.

MR. NESLAND: Your Honor, this is a good place to adjourn.

THE COURT: All right. I will see you at ten o'cloc' tomorrow morning, ladies and gentlemen.

Remember, try to be here a few minutes early.

Remember what I told you about not letting anyone speak to you.

There is another rule that applies, and that is that you are not supposed to form or express an opinion until the case is finally submitted to you. I don't know about forming opinions. That is kind of amorphous, but expressing opinions, that is quite explicit, and there is a reason for that.

Obviously, as you can see already, the case is presented to you, by necessity in very disjointed segments. You

and I have returned it to the government because there is nothing in there about Alaimo, but, more significantly than that, their own opening takes Alaimo out of this case in June of 1971.

Judge, I know about all of the precatory statements about joint trials. I submit to your Honor, in light of all of this I don't see how Alaimo can get a fair trial. I can try Alaimo's case separately in three days, tops, based on this particular case. I don't see how I can defend against this type of material. I really don't.

Any admonition I don't think will cure the weight of this. If it wasn't so serious I would make a facetious observation that there is prima facie proof Alaimo wasn't involved in the conspiracy because he was the only one that was not considered to be murdered.

THE COURT: You said you could try the case in three days. It occurs to me you might wonder why the government doesn't prefer that. Because I think contrary to your view that if there is a case against your client that could be done in three days, my feeling is what is likely to happen is they will throw your client out at the end. However, your

motion is well taken and I will take it into consideration.

Furthermore, you don't need to repeat every time the basic position you have taken. It will continue to be the same, I assume, every time more evidence of this nature comes up and you would object to it.

MR. NEWMAN: I don't want to keep getting up in front of the jury for obvious reasons.

THE COURT: At the close of the day yesterday you made a new observation with respect to Otvos in which you brought the Bruton doctrine in. Your point is a very interesting one and I just want the Court of Appeals to realize I understand it so if they reverse me, they know how to do it.

Your point is that the government's negligence eliminating Otvos from the case should invoke the Bruton doctrine and should make inadmissible any testimony by Otvos as a conspirator.

There are two observations. So far if I were to rule that Otvos' testimony was improperly admitted -- so far whatever they have heard has been harmless. I assume that is not going to be the case before the case is over, and I am admitting Otvos' tes-

knows is in the government's possession. I have a tax return I will turn over to him, and that I found after I talked to Mr. Perna, and there are some documents --

THE COURT: Listen, we will not talk any more Go in the courtroom.

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen. Thank you for being prompt.

M A R I O A. P E R N A resumed.

THE COURT: Mr. Perna, this is a big room and everybody in all different parts have to hear you so speak up.

DIRECT EXAMINATION CONTINUED

BY MR. NESLAND:

Q Mr. Perna, when we adjourned for the day yesterday you were testifying about the conversations you had with Joseph Stassi with respect to killing Anthony Verzino, Suzan Verzino and Bubby Sorenson.

I would like to ask you whether or not you had any conversation with Joseph Stassi during that period as to what you should do before you killed Bubby Sorenson?

A I told Joseph Stassi at that time that I would

rather speak to Bubby Sorenson first as I still considered him a friend of mine and I wanted to determine whether or not these things that I had heard about him were true, and he said, "That is up to you. If you feel that it wouldn't be necessary after you talked to him to kill him, then you make that decision."

MR. NADEN: I didn't hear the last part of it.

THE COURT: He said: if you thought it was necessary to kill him after you talked to him, you make that decision.

Q Did you have any conversation with Joseph Stassi about what would be done about Verzino before you sent the poison into the prison, if you were able to obtain it?

A Yes, sir.

Q What did Joseph Stassi say and what did you say?

A Joe told me it would be better if we never discussed anything about the business with Verzino any more. We keep him ignorant of everything so he wouldn't be able to go around and talk about it any more. When the proper time come, he would kill Verzino.

Q At that time did you have a conversation with Joseph Stassi as to what you would do when you went home?

A Yes.

Q Tell, the court and jury what that conversation was.

A That was to meet with Tony Stassi, that Joe Stassi would make a prearranged meeting with Tony Stassi for me to meet him at an appointed place and I should give Joe Stassi a telephone number that he could give to Tony Stassi where Tony Stassi would be able to reach me and a name, a date and a time I would be able to meet him at this appointive place.

Q Did you give him a telephone number where you could be reached?

A Yes.

Q What telephone number did you give him?

A My sister's.

Q When did you get released from Atlanta prison?

A May 5, 1972.

Q After you were released from prison on May 5, 1972, did you receive any money?

A Yes, sir.

Q How much?

Q Who did you receive that from?

A From Suzie.

Q Who had she given it to?

A She had given it to my niece.

Q For you?

A Yes.

MR. GARLAND: Could we have the identity of that party, please?

Q Who was your niece?

A Ann Macanisi.

Q Do you recall approximately when that money was given to her?

A I believe the beginning of 1972, prior to my coming home.

Q You testified that Joseph Stassi was to arrange an appointment for you with his brother Tony?

A Yes.

Q Did you thereafter meet with Tony Stassi?

A Yes, sir.

Q Approximately when did you meet with him first after you were released from prison?

A I don't recall exactly. I believe it was within a week or 10 days after I had been released.

Q How did it come about?

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I then asked him was there anything new, as we had been still expecting the last shipment, which we never heard anything about, I asked him about that. He said there was nothing new in regard to that shipment. He said there was one point he wanted to clear up with me and that was in regard to Bubby, that Joe Stassi had told Tony Stassi on a visit that Verzino was complaining that Bubby Sorenson owed us 200 or 250 thousand dollars. Tony Stassi asked me if that was true, did Bubby owe us this amount of money. I said, "No, as far as Bubby, he doesn't owe us any money. I am only concerned with his friendship. That is all he owes me."

THE COURT: Is what?

THE WITNESS: Friendship.

Q Is that all the conversation you recall at that time?

A He told me then that he would get in touch with me in a few days, that he had to leave, that he had an appointment, and we made an appointment for the Casa Del Monte, a restaurant on West 72nd Street, and for me to meet him there about a week later.

Q Had you personally met Anthony Stassi before you first met him at the Manor House or outside the

and here I spent only 22, 24, I don't understand." He said, "Whenever he tells you anything like that again, don't listen to him. If you need anything," Tony Stassi said, "let me know and I will get it for you." I said, "Fine."

I then told him I expected go to Florida some time in August, I had to go down there -- I told him I was going down there just to take my family, and he said, "Bubby should be in Florida at that time. Are you going to see him while you are down there?" I said, "Yes, I will." He said, "In fact, I think he may be down there now. Why don't you call him before you go down and let him know that you are on your way down." And I believe I had seen Bubby just prior to this and spoke to Bubby, at which I explained to Tony Stassi at that time, and I told Bubby I would be down in Florida and he told me to call him at his mother-in-law's house.

MR. NADEN: I am sorry, I didn't hear the last part.

THE COURT: He told him to call him at his mother-in-law's house.

Q Go ahead.

A I then told Tony Stassi, "Tony, there are

a few things I don't understand. I haven't said anything up until now because I have been made to feel that I don't know where I stand, like I was told one thing by your brother Joe while I was in Atlanta and now speaking to you, I find you are defending Bubby and I was told that you were made to understand that Bubby had to be killed." He said, "Yes, I did have a discussion with my brother about this. I also had a discussion with my brother about Suzie."

Q Meaning Suzie Verzino?

A Yes, that she was to be killed also. I said, "What is your feelings about this? What is going to be done about this?" He said, "Let's put it this way: Bubby and I always got along all right. We have had our differences but I don't really have any problems with Bubby." He said, "In fact, I am not married to Bubby but Bubby is married to me." He said, "Whatever you feel you want to do with Bubby, if you have a personal thing with him, that is up to you."

He said, "Insofar as Suzie, when that comes about, when you are ready to do that, you let me know and I will give you all the help you want with that."

Q Did he tell you anything about Suzie at that time?

A Yes. He had told me that he met her once and that was only because he had to straighten out this business about the $2500 that Suzie claimed that Bubby owed her and that he was sorry he had not done it then because she was a loud mouth and so forth.

Q Did you have any conversation about narcotics?

A Yes.

Q What was that conversation?

A I asked him again about the shipment. He told me he had received the last shipment in June. I told him, "I don't understand this. I was home at this time, why didn't I know about it. You told me you were going to contact me and let me know."

He said then that it was committed prior to my coming home and he had already taken care of it and there was no need for me to get involved in it.

I said, "Does your brother know about this?" and he said, "Yes, he does." And I assumed that Tony Verzino knew.

I then told him, "I am disappointed because I expected to earn some money from this," and he said, "I am expecting another load some time either in September, maybe October." At that time,"he said, "you

get there."

Q Did you go to Florida?

A Yes, sir.

Q Did you call him when you arrived at the end of the Turnpike?

A Yes.

Q What happened then?

A After I called him he told me to wait out at the phone booth and he would come up to pick me up, which he did. From there he took me to his mother-in-law's house and he introduced me to his mother-in-law, his brother-in-law and his wife.

Q Do you recall their names?

A Not all of them.

Q Do you recall any of them?

A His wife's name.

Q What was her name?

A Claire.

Q Had you previously learned that Bubby Sorenson had gotten married?

A Yes, sir.

Q When did you first learn that?

A At first that he was going to get married by Joe Stassi while I was still in Atlanta. He told

me his brother had been down on a visit, that the brother told him that Bubby wanted to get married and that Bubby wanted Tony Stassi to be the best man at the wedding. Joe Stassi told Tony Stassi, "I don't want you to be the best man at that wedding. I don't want there to be any connection between you and this guy in the event anything should ever happen."

Some time later on, I believe it was in April, I had a visit on the same day Joe Stassi had a visit. His brother was there. His brother came over to me in the visiting room to say hello and told me also that Bubby was getting married. I told him, "Fine, if you see him, wish him the best of luck and I'll be seeing him soon, I'll be getting out soon and I'll be seeing him."

He then offered to buy some coffee for me and my visitors and we accepted.

Q After you met his family what did you do in Florida?

A He then took me and my family to his apartment. He told my wife and daughter, my sister-in-law, to make themselves comfortable, and then asked me to go out and have a drink with him. And I went out and had a drink and we were out about an hour.

A We parked and sat in the car and waited approximately 40, 45 minutes for Bubby to show up as he had told us he was going to take Laurie home.

Q What was your intention at that time?

A To kill Bubby.

Q Did he show up?

A No.

Q What did you do then?

A We then decided to leave.

Q Did you have occasion after that to hear from Bubby again?

A Yes.

Q When was that, do you recall?

A February of '73.

Q How did you hear from Bubby?

A He had called me to tell me there was a friend of mine at the Evergreen Bar in Brooklyn that wanted to see me. I also told him I was in the company of Joey Condello and that Joey Condello wanted to see him. He said, "Can you come out to the bar?" and I said, "Yes." He said, "Okay, how long will it take you?" I said, "A short while. I'll be leaving in a few minutes."

With that I went with Joey Condello out to the Evergreen Bar in Brooklyn. We walked over to

Bubby Sorenson in the bar, spoke to him for a minute. Then I recognized a friend of mine sitting at the bar. The friend of mine I recognized as Ernie Pontiac.

Q That is Ernie Malizia?

A Yes.

Q Did you have a conversation with Ernie Malizia at that time?

A Yes.

MR. NADEN: When is this?

MR. NESLAND: February, 1973.

THE COURT: Ernie Malizia and Pontiac are the same?

THE WITNESS: Yes.

Q What was said?

A At the time I knew Ernie Malizia was a fugitive from justice. He had gone on the lam as he had learned there was an indictment that had come down on him for his arrest back in 1971. He told me at that time, "Don't use the name Ernie whenever you speak to me, use the name Harry. I am using the name of Harry Luppes." He said, "If you introduce me to anybody, introduce me as Harry Luppes." I said, "All right."

He said, "How are you making out? Are you

doing anything?" and I said, "I am not. I am looking to get into some kind of action, some kind of business." I said as of yet I hadn't done anything but am still looking.

He told me then that he himself was looking for the same thing, and we then agreed to join a partnership and go into the narcotics business, the two of us.

Q Did you go in the narcotics business with him?

A Yes.

Q Did you start dealing in large quantities of narcotics with Ernie Malizia?

A Yes.

Q During the course of your narcotics business with Ernie Malizia in the next few months did you have conversations with him as to what had gone on before?

A Yes.

Q Approximately how often did you talk about that, that you recall?

A A few times. I don't recall how many.

Q Will you tell the court and jury the substance of the conversations you had with Ernie Malizia

about what had gone on before?

THE COURT: Do I take it this narcotics business he was now concerned in had nothing to do with this case?

MR. NESLAND: That is right.

THE COURT: You are only using this for the purpose of conversations?

MR. NESLAND: With respect to the conspiracy charged against these defendants.

A Ernie Malizia told me -- I asked Ernie Malizia, I said, "Did you receive the two loads that came in or the three loads?" and he said, "No." I said, "You received some of the loads?" and he said, "Yes." He said, "I recieved one load back in 1970, in October, 1970. He told me he had received another load in 1970, some time in December of 1970. He had been promised some more goods, some more loads which he never received, but in 1971 he had gone on the lam due to this indictment that came down on him and he left his business in the hands of a fellow by the namme or Albaduce.

Q Did he tell you when he had gone on the lam?

A I believe that was in February of 1971.

Q He told you he had gone on the lam in February

* * *

A After having talked with Tony Stassi about the 15,000 he owed Malizia and which he told he he would see Malizia himself and straighten it out with Malizia himself, I asked him was there any narcotics available. He told me he had been to Mexico, that he had been offered a deal in Mexico for Mexican goods. He said, "Do you know what Mexican goods are?" I said, "Yes. The only thing bad about it is the way it's processed, it's not as good as the European process." He said, "A lot of people don't understand that. That is why I turned down the goods, I thought I might have trouble getting rid of it when I brought it into the United States." I said, "You should have took it anyway."

I told him that Malizia and I would take any Mexican goods he could get, that we understood what it was and we could use it. He said, "I think I may come back with a better deal. I am leaving in a few days for France," he said, "and if everything works out well, I will have a load for you when I get back from France."

He then mentioned to me, "Oh, I've been down to see my brother and as far as that thing with Suzie and Bubby, I was told to forget about it, don't do anything about it. I was supposed to tell you to

leave it alone, don't do anything more about it."

Q What was he referring to there?

A The conversations that we had had about killing Bubby Sorenson and Suzie.

Q What happened after you had that conversation with Tony Stassi?

A We then went to 71st Street, to the garage where I had parked the car, where Malizia was waiting for me, and I told Malizia about Tony Stassi having been to Mexico --

THE COURT: You didn't have Tony Stassi with you?

THE WITNESS: He was still with me.

Q Where were you standing at that time, if you recall?

A Standing on the sidewalk.

Q Where was it?

A 71st Street, west of Broadway.

Ernie said, "What happened with the merchandise?" and I said, "He turned down the deal."

He asked Tony Stassi, "Why didn't you bring the goods in? You know I would have used it." Tony Stassi said, "I wasn't in touch with you up until now."

And Malizia then spoke to him about the

$15,000 that Tony owed him and they had a conversation about it. I don't recall the exact words, but Tony said something to the effect that he would see that Malizia got the 15,000 some time in the future.

He then told myself and Malizia again he was on his way to France, that he would be back in a week or so, maybe a little longer, and he would be in touch with us, that he would have a definite deal for us concerning a load when he got back from France.

Q Did there come a time when you were contacted about that load?

A Yes, sir.

Q Approximately when, after you had this meeting in the Casa Del Monte with Tony Stassi, were you contacted?

A About two weeks later. I don't remember exactly.

Q How were you contacted?

A Bubby Sorenson called me.

Q Did you have a conversation with Bubby over the phone?

A Yes. Bubby told me he heard from the Old Man --

Q When he referred to the Old Man, to whom

did Bubby Sorenson refer?

MR. NADEN: Objection to the form of the question.

THE COURT: Who did you understand he was talking about?

THE WITNESS: Tony Stassi.

Q When you used the term "Old Man," to whom did you refer?

A Joseph Stassi.

THE COURT: How did you know he was referring to Tony when he used the words "Old Man"?

THE WITNESS: Because he used in previous conversations with me.

THE COURT: About Tony?

THE WITNESS: Yes.

A He told me heard from the Old Man and we were to meet with him in Brooklyn in a restaurant by the name of Briones. He asked if I knew where it was and I told him I did, that I had been there previously. We made an appointment to be there and Malizia and myself drove out that evening to Briones out in Brooklyn.

Q What time would you put this in in 1973?

A Late March or early April.

Q Who went with you to Briones, if anybody?

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THE COURT: When will that be?

MR. NESLAND: I would expect it would be close to 1.

THE COURT: Off the record.

(Discussion off the record.)

MR. GARLAND: Your Honor, my clients have alerted me to say that we waive nothing.

MR. NESLAND: Your Honor, I would like to finish up with this witness --

THE COURT: I will permit the prosecutor to put in the tape the the clear understanding that if the tape turns out to be inadmissible, I will not charge the jury to disregard it, there will be a mistrial.

MR. KADISH: I doubt I could quibble with that.

If that happens -- never mind.

(In open court; jury present.)

M A R I O A. P E R N A resumed.

DIRECT EXAMINATION CONTINUED

BY MR. NESLAND:

Q Before we took the morning recess you testified you and Ernie Malizia had gone to Briones restaurant?

A Yes.

Q When was that?

A March of '73 or early April.

Q Who was there when you got there?

A We met with Bubby Sorenson and Tony Stassi.

Q Did you have a conversation at that time?

A Yes.

Q Would you please tell us, to the best of your recollection, what each of you said at that conversation?

A Tony Stassi told me, told Malizia and myself, that he had been to France and that he had made arrangements to get some narcotics in from Canada. He told us that it would be a deal where we could work it out where we would receive 10 or 20 packages either every month or every other month and that he would have to go back to France or see the Frenchman again, in that he had to make final arrangements. He first wanted to know from us whether we would be interested because we would have to bring the goods in from Canada ourselves.

MR. KADISH: Who is "us"?

THE COURT: Who is "us"?

THE WITNESS: Tony Stassi wanted to know

from Malizia and myself whether we would take the goods in from Canada ourselves, if we had the means to do it. We told him then we did and we were willing to.

We asked him then whatthe price would be. He said that he figured at that it would probably be --

MR. KADISH: I don't mean to interrupt but he keeps saying "we." My understanding is Malizia is not at this meeting.

MR. NESLAND: He is at this meeting.

THE COURT: Let's go back. Where was this meeting?

THE WITNESS: At Briones restaurant in Brooklyn.

THE COURT: Who is there?

THE WITNESS: Malizia, myself, Sorenson and Tony Stassi.

Q Continue with the conversation about price.

A Tony Stassi said, at that time he said the price would be somewhere around 19 or 20 thousand dollars per package. He said now that he had our agreement we were willing to take it in from Canada, he would see the Frenchman and make the final arrangements with us and get back to us.

He said he would either contact me or Malizia

himself or he would have Bubby Sorenson do it for him.

Q Did there come a time that you had a contact from either one of them?

A Yes.

Q When was that?

A I received a phone call from Bubby Sorenson.

Q Approximately when, after this meeting?

A Something like 10 days later, a week later, I don't remember exactly.

Q That would be what month, if you recall?

A April.

Q What was the conversation you had with Bubby Sorenson over the phone?

A Bubby Sorenson said we were to go to Brooklyn, to go to a diner out in Brooklyn, that he would have to see us, and that the Old Man would be with him.

Q What did you do after you had that telephone call?

A Malizia and I then went to Brooklyn to a diner that Sorenson had mentioned over the phone and we met with Bubby Sorenson and Tony Stassi.

Q Had you ever been there before?

A No.

Q How did you get there?

money after that?

A Yes, sir.

Q Who did you give money to?

A Bubby Sorenson.

Q Approximately when did you give him this money, if you recall?

A I believe it was some time in September, 1973.

Q Will you tell the court and jury the circumstances of that?

A I received a phone call from Bubby Sorenson in which he told me that he had to see me, that it was very important. I told him all right and he gave me the name of a restaurant in Brooklyn on 5th Avenue, somewhere in the 70s or 80s, I forget now, and that he had to see me that night, it was very important. I said, "All right, I'll be out there in a short while -- about an hour or so."

I then met with Malizia and I told Ernie, "I got a call from Bubby and Bubby wants to see us." He said, "Did he mention the Old Man?" and I said, "No."

"Then more than likely all he wants is to borrow some money from us."

I said, "You don't know. Let's go and

associate with one another without any implication whatsoever.

MR. NEWMAN: I move to strike it on the ground of relevancy to my client and I renew applications made at an earlier point.

THE COURT: Denied.

MR. NESLAND: May I have this marked as Government's Exhibit 5.

(Government's Exhibit 5 was marked for identification.

MR. NESLAND: Would you mark this as Government's Exhibit 5A.

(Government's Exhibit 5A was marked for identification.)

MR. NESLAND: Government's Exhibit 5 is an envelope which contained a copy of a tape recording which is presently on the tape recording machine and is ready to work.

Government's Exhibit 5A represents a transcript of a portion of that conversation and I would ask the witness to look at Government's Exhibit 5A, read it, and see if he recognizes that conversation, or that portion of the conversation.

Defense counsel have previously been given

copies.

Q Have you read it?

A Yes.

Q Have you had occasion to listen to a tape recording of a conversation you had with you and Joey Condello on January 7, 1974?

A Yes.

Q Was that the conversation you previously testified occurred in the Steak and Brew in Ft. Lee, New Jersey?

A Yes, sir.

Q Have you listened to the tape-recorded conversation and compared it with the transcript that I have here marked Government's Exhibit 5A for identification?

A Yes, sir.

Q Did you recognize the voices on that tape?

A Yes, sir.

Q Whose voices did you hear on that tape?

A Mine, Joey Condello and Jimmy.

Q During this portion of the conversation that is here in Government's Exhibit 5A who was present?

A Just myself and Joey Condello.

* * *

Q It says there, "He is still in touch with the old man." Who were you referring to there?

A Joseph Stassi.

Q Do your knowledge, had there been contact between Anthony Verzino and Joe Stassi after he had left the Atlanta prison?

A I know of one time, sir.

Q What was that?

A Anthony Verzino told me that Joseph Stassi was to call his wife's house and Anthony Verzino was requested to be there at that time to receive the call.

Q What is his wife's name?

A Fran.

Q "The brother Tony, nobody has heard from him, he just disappeared." Who were you referring to there?

A Tony Stassi.

MR. NADEN: Might I approach the bench, please?

THE COURT: No.

Q You refer to the lawyer. Who were you referring to?

A Buddy Franklin.

MR. NESLAND: Your Honor, other than reading

Q What was the occasion for your physical contact with Mr. Marshal?

A He had a fight with Joey Condello in which he pulled a knife on Joey Condello and I stopped him from using the knife.

Q And that had nothing to do with your attempting to collect debts inside the penitentiary?

A No.

Q In connection with the narcotics business in which you were distributing narcotics inside the penitentiary, the defendant Joseph Stassi had nothing to do with that business of yours and received no money from it, is that right?

A Yes.

Q In connection with your gambling activities in there, the defendant Joseph Stassi had nothing to do with that and received no money?

A Yes.

THE COURT: It is correct he did not have anything to do with it?

THE WITNESS: That is right.

Q You related briefly about the time you were coming home and the amount of money you thought you might have coming which kept shrinking down to about $55,000, $50,000.

A And another by the name of Donny.

Q Did you recruit these people, did you and Malizia recruit them together as your sources of narcotics?

A Yes, sir. They were all partners.

Q They were all partners?

A Yes, sir. We had another source.

Q What was the other source?

THE COURT: You say you recruited them. Do I understand that you got them together or were they a going business when you went to them?

THE WITNESS: They were an establishment business we approached them and asked them to help us with narcotics.

Q They were in business together and became your supplier?

A Yes, sir.

Q What was your other source?

A The oth er fellow I got to know was Tony West.

Q All right. Tony West. Any other suppliers that you had?

A There was one other whom I've never met.

Q All right.

Now, you never received any narcotics from the time you got out of the penitentiary in 1972 up until the time of your ultimate confinement from Joe Stassi?

A No, sir.

Q Or for that matter from Anthony Stassi?

A No, sir.

Q And you never received any money, did you?

A No, sir.

Q Now, of the 100 -- are you acquainted with what the punishment is in the State of New York for the sale of heroin for a second or third offender?

A Yes, sir.

Q What is that punishment?

A I believe it is a minimum of 15 to 25 years to life.

Q 15 to 25 years to life?

A Yes, sir.

Q And the minimum, that would be the time period before you could possibly be eligible for parole?

A Yes, sir.

Q So that if you got a 25 to life sentence for one sale of narcotic[illegible] you wouldn't be eligible for parole until after you made th[illegible]25 years?

A Yes, sir.

Q All right. And of course you had engaged in the majority of some 100 sales, had you not?

A Something like that. I don't recall.

Q And the reason you had decided to have Mr. Verzino killed -- excuse me. When was this that you came upon your plan to kill Verzino?

A The beginning of '74.

Q And of course that plan as you testified had nothing to do with the defendant Joe Stassi, at that time?

A At that time, no, sir.

Q And your desire to kill Verzino grew out of what?

A Out of problems that I had with Verzino as to his drinking and talking about to other people about our business, the same as he had done in Atlanta.

Q So, he was drinking and talking about your business with Malizia?

A Yes, sir.

Q And his business which you all were in partnership?

A Yes, sir.

Q How about in reference to the monetary transactins, in your Malizia business, he dealt correctly with you on those?

A Yes.

Q He had. So, that didn't have anything to do with why you wanted to kill him?

A I didn't understand the question.

Q Let's see if I can make you understand it.

Did you understand prior to your first cooperation in February of 1974 that if you could get any possible benefit from cooperating, that you would have to make it attractive to those that you would have to have agreed to accept you as a cooperating witness? You understood that, you had to make it an attractive thing?

A I didn't give it no thought.

Q You didn't think about it before you began to name the people you were involved with in February of 1974 when you first cooperated?

A No, sir.

Q And when you first cooperated and named the people you were involved with in 1974, you did not mention Joseph Stassi, is that correct?

A Yes.

Q And also, you were aware of one of your courses of action would be to escape if you were caught.

A Yes.

Q As a matter of fact, the process of escape, you had used escape the first time you were confined in the Air Force.

A In the Army.

THE COURT: But you had no plans to import heroin here to the United States from South America, is that right?

THE WITNESS: That is right.

Q Mr. Perna, at the time of your escape from West Street, was it your intention to return to the sale of narcotics as a mechanism to raise money?

A Yes, sir.

Q Did you attempt to escape from any other jails since your attempted escape from West Street?

A No, sir.

Q Did you plan at any time with anyone to attempt to escape from any other jails?

A No, sir.

Q Of course your escape from the jail here in New York, Joe Stassi had nothing to do with that.

A No, sir.

Q The answer is, he did not have anything to do with it.

A That's correct.

MR. GARLAND: Would you mark these.

(Defendant's Exhibit A marked for identification.)

THE COURT: How long do you expect to be?

* * *

ps7 Perna - cross

THE COURT: No, it is collateral.

MR. GARLAND: Let me try to explain, your Honor. As I see it, he testifies on direct to the activities he had in the penitentiary in association with these people. He goes into that on direct. What his association was, what his times and sequence of being with them were. He makes that an issue. He tries to establish the conspiracy by proving that that exists.

Now, I intend to bring affirmative witnesses to show that his activities weren't as he testified to on direct.

THE COURT: Supposing all these things were true, they wouldn't contradict anything.

MR. GARLAND: It shows one, that he was not with Stassi or that he was on a daily basis with him. It shows No. 1 that the association --

THE COURT: How does that show that?

MR. GARLAND: It shows he was associated with others.

MR. NESLAND: He never said he was associated with him only. He says he was associated with a number of people.

MR. GARLAND: I am entitled to show the extent to which he has lied about his associations.

ps8 Perna - cross

THE COURT: You have an exception to that.

MR. GARLAND: Let me go further. I intend to also develop the theory that as part of this narcotics dealing, he had ample sources of heroin and as part of his discussions and in the execution of his narcotics business, he engaged in these other narcotic transactions. He discussed his narcotics dealings. He discussed his other sources and in the discussion of sources in h is dealign, at no time was Joe Stassi ever mentioned. If the Government is entitled to show an existence of an association, I am entitled to show at the time the absence of it --

2 THE COURT: But you are not showing that.

MR. GARLAND: At the end of that, I intend to show that this man -- and this all bears on his motive, substituted Stassi for the guilty people, the other connection Nebbia, the South Americans and it's all part and parcel.

THE COURT: You can show that on the basis of getting in -- I accept this as an offer of proof, and you have an exception.

MR. GARLAND: May I --

THE COURT: I am not going to stop you from doing it. I'm just going to warn you you are not going to be allowed to contradict it. I am not stopping

A Yes, sir.

Q I think the number of meetings was about five or six, is that correct?

A Approximately, yes, sir.

Q What would you say the total number of hours were that you met on all of those meetings?

A 15 to 18 hours.

Q In the course of any of those meetings or in the course of any time with your relationship with Anthony Stassi as you claim it to be, after the month and year of May 1972 after your release from prison, did Mr. Anthony Stassi ever give you a dime?

A No, sir.

Q Did he ever pass any money to you whatsoever concerning narcotics?

A No, sir.

Q Did you ever see him with a speck of heroin?

A No, sir.

Q All you did was talk about it?

A Yes, sir.

Q Have you ever lied to a probation officer?

A I may have. I can't say for sure at this time.

Q Do you remember ever being asked by the parole

* * *

Q Were you able to date this roughly, the year or the month?

A i don't recall. I must have put it together some time in 1973.

Q Some time in 1973?

A Possibly 1972. I don't know.

MR. KADISH: May I approach the witness, your Honor?

THE COURT: Yes.

Q Wasn't it your testimony that that list of phone numbers was the list that you accumulated; in other words, you would destroy your prior list and make that list up and you would destroy your prior list and make the next list up?

A Yes, sir.

Q When was the first time that you remembered that Tony Stassi or Joey Stassi or anybody gave a number or telephone numbers on how to reach Anthony Stassi?

THE COURT: The last time or the first time?

Q When did this witness recall the first instance when somebody gave you a number to reach Anthony Stassi, whether it was Joe or Tony or anybody?

A I believe Tony Stassi gave me the numbers.

Q Was that the Jaeger house?

A The number of the Jaeger house?

Q Did he give it to you when you met him outside the Jaeger house when you got out of jail?

A i don't think so, no, sir.

Q Was it before that?

A No, I believe it was some time after that.

Q But it was shortly after you got out of the penitentiary?

A It was a month, two months, three months. I'm not sure.

Q How many numbers did he give you?

A He gave me numbers on more than one occasion.

Q Did he give you various numbers?

A Yes.

Q The numbers in New York?

A I believe he gave me one New York number and two, possibly, or a third Florida number.

Q He never told you not to write those numbers down? You didn't commit them to memory, did you?

A No, sir.

Q Where did you write them?

A I had them on a slip of paper.

Q It was your habit to record numbers of important people in your lifetime on your list, was it not?

A Yes, on book-matches, on all types of paper.

Q As I recall your testimony about Exhibit 2, Ernie Stassi's name is not on there, is it?

A No, it is not.

Q And this was a list, I believe, from 1973, is it not?

A Yes, sir.

Q In your partnership that you described with Ernie Malizia, one of the Pontiac brothers with which you described numerous heroin transactions on Mr. Garland's cross, neither of the Stassi brothers had anyhing to do with that?

A No, sir.

Q How many times would you say in your lifetime have you lied about important matters, if you can remember, that were important to you?

A I couldn't estimate something like that, your Honor.

THE COURT: He says he can't answer a question like that.

MR. KADISH: I will try to make it more specific.

MR. NESLAND: Is it not a fact, Mr. Perna, that lying was part of your job in narcotics?

A Part of my life, yes.

* * *

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MR. GARLAND: I would prefer to make it at the side bar.

THE COURT: All right, come in the robing room.

(In the robing room.)

THE COURT: Mr. Garland.

MR. GARLAND: May it please the Court:

My motion:

I most respectfully move for the severance of the defendant Joseph Stassi and for the defendant Sorenson on the grounds that the colloquy that has transpired between counsel for the defendant Sorenson and the Court has prejudiced and may well prejudice the defense of Joseph Stassi, for it is my humble opinion that the Jury is likely to have received the impression from the colloquy which transpired and appears in the record, from the manner in which your Honor responded during the colloquy, that the position of the defense in this case is one that should be given little attention and it is not of merit and that it is frivolous, although remarks were directed directly toward Mr. Vaden I feel there is a necessary spill-over upon the defendant Joseph Stassi since he sits right around the table erom Mr. Sorenson and I make this motion covered with the prime motion as to severance from Sorenson.

THE COURT: Unhappily it is frivolous to argue

about a sentence of over 90 years. You made the same argument, that it is frivolous and there is no two ways about that. The jury at the appropriate time, will be abundantly constructed that the defense is based on the probability that the witness may be lying to save his skin and is entitled to most careful consideration.

I have considered that. If all of you insist on making those arguments as to 90 years, it cannot be helped. To say a man may spend more than 90 years in jail beginning at the age of 46 is absurd on its face. I can't help that.

MR. GARLAND: Your Honor, I don't know what a juror will think in reference to his own life expectany --

THE COURT: There isn't a juror in this world that thinks that this man is going to live more than 90 years.

MR. GARLAND: Our position is that your Honor should not have commented on that.

THE COURT: I agree 100 per cent, I shouldn't have, but there is no prejudice.

MR. GARLAND: I think there is prejudice and impact.

THE COURT: There cannot be any impact. I called the jury's attention to the statement about 90

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years. It is frivolous and if you think that the Court of Appeals will agree that the jury will be prejudiced, all right.

MR. GARLAND: It was as to the magnitude of his worry, your Honor.

THE COURT: If the Court of Appeals wants to worry about the magnitude of his worry as to what is going to happen in 90 years --

MR. GARLAND: It was the impression on the jury, your Honor.

THE COURT: It would have been better if I had kept my mouth shut, that is a truism, but it was not ptejudicial. You have made your record and other counsel have joined in it.

MR. NADEN: I didn't mean to suggest that he was going to do 90 years or a total of several hundred years in jail.

THE COURT: After sitting there for more than a half hour, being a human being and listening to talk about absolute inanities, having heard Mr. Garland do absolutely the same thing, then I did what I shouldn't have done. I made a comment. You made your record and that is it.

MR. KADISH: Just so it is clear on the record.

WALACH

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 30 day of June , 1976 at No. 1 St. Andrews Pl. NYC deponent served the within Appendix upon U.S. Atty., So. Dist. of N.Y. the Appellee herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 30 day of June 1976

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, ~~1976~~ 1977